

Srinarayan Traders Vs. State of Orissa

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Court : Orissa

Decided On : Mar-27-1970

Reported in : [1970]26STC434(Orissa)

Judge : G.K. Misra, C.J. and ;S. Acharya, J.

Appeal No. : S.J.C. Nos. 55 to 60 of 1967

Appellant : Srinarayan Traders

Respondent : State of Orissa

Advocate for Def. : S.C. Mohapatra, Standing Counsel (Sales Tax)

Advocate for Pet/Ap. : R. Mohanty, Adv.

Judgement :

G.K. Misra, C.J.

1. The petitioners are dealers in grocery. The references relate to the quarters ending 31st December, 1957, to 31st March, 1959.

The Sales Tax Officer initially found the following defects in the accounts of the dealers :

(i) They failed to account for 200 bags of sugar purchased from Harinagar Sugar Mills on 1st August, 1957.

(ii) They failed to account for 150 tins of groundnut oil purchased from Laxmidhar of Purulia and 150 tins of groundnut oil purchased from Ranasaheb Banshidhar of Purulia and 50 tins of coconut oil from Madanlal & Co. of Purulia on 22nd June, 1957.

(iii) They failed to account for their transactions with Ghanshyamdas Nirmalkumar of Rourkela.

(iv) They failed to account for all their transactions noted in five slips of paper seized by an Assistant Sales Tax Officer of the department from their business premises on 16th January, 1959.

(v) They failed to explain stock discrepancy in betel-nut as found after stock verification on 29th January, 1959.

2. On account of the aforesaid defects, the books of account were rejected and the Sales Tax Officer, Rourkela Circle, passed a best of judgment assessment. Against the order of the Sales Tax Officer the petitioners went up in appeal. The cases were remanded, in order to give an opportunity to the dealers to explain the defects. After remand, the Sales Tax Officer was satisfied with the explanations of the dealers in respect of defects (i), (ii), (iv) and (v), but rejected the explanation in respect of defect No. (iii) which related to the failure to account for transactions with Ghanshyamdas Nirmalkumar of Rourkela.

The Sales Tax Officer ultimately disbelieved the accounts and raised the gross turnover by Rs. 50,000 per quarter. The appeals before the first appellate authority and the Tribunal were unsuccessful.

3. The judgment of the Tribunal is cryptic and runs thus:-

The appellant is a very big wholesaler of Rourkela. His accounts were found defective. At the time of inspection of the shop-premises on 16th January, 1959, some loose slips of paper were detected. Those contained details of some transactions, which were found not to have been taken to the regular accounts. Further the dealer was found to have suppressed as many as 13 transactions with one S. Agarwala, between 10th January, 1958 and 19th July, 1958. I find the

appellant was given sufficient opportunity to rebut the charges levelled against him and the explanations offered by him were rightly rejected not to be satisfactory. In the circumstances of the case, the accounts were rightly rejected. Taking into consideration the status of the appellant as a very big wholesaler, the enhancements, as made, do not appear to be heavy. I feel no justification to interfere.

Aggrieved by this order, the dealer asked for a reference. The following questions have accordingly been referred by the Tribunal to this court under Section 24(1) of the Orissa Sales Tax Act:

(1) Whether under the facts and circumstances of the case, the order of the Tribunal is based on an error apparent on the face of the records and hence liable to be set aside.

(2) Whether the finding of the Tribunal that the slips of paper received from the shop-premises of the dealer on 16th January, 1959, have affected his final decision for rejecting the books of accounts of the dealer as justified for enhancement of the gross turnover by Rs. 50,000 per quarter.

4. The question for consideration is whether the ultimate conclusion of the Tribunal on a question of fact, can be interfered with by this court in exercise of its jurisdiction under Section 24 of the Orissa Sales Tax Act, on the ground that the conclusion was the result of an error of record, which ultimately affected the decision. As already pointed out, the Sales Tax Officer accepted the explanation of the dealer in regard to defect No. (iv) relating to the discovery of loose slips of paper. It was open to the Tribunal, as the final authority on facts, to re-examine the matter and reject the explanation offered by the dealers. The Tribunal however did not exercise its jurisdiction in that manner. On the contrary, under an erroneous impression that the explanation of the dealer in respect of the aforesaid defect was rejected, it held that the enhanced assessment was correctly made. The Tribunal thus-without applying its mind to the materials and the explanation-committed an error of record which vitiated its ultimate conclusion. Its judgment gives no reasons for taking a different view from that taken by the assessing authority. As a result of this error, its finding that the accounts were incorrectly maintained is vitiated. Such

a finding is not binding upon this court.

5. The position of law is now well settled: that if the ultimate court or authority on facts records a finding, which is the result of non-consideration of admissible evidence or consideration of inadmissible evidence, then such a finding is subject to examination by this court. The principle is so salutary that no authority is necessary. It pervades all branches of law, civil, criminal and taxation. The matter is concluded by a number of Supreme Court decisions : see *Dhirajlal Girdharilal v. Commissioner of Income-tax* [1954] 26 I.T.R. 736 (S.C.), *G. Venkataswami Naidu v. Commissioner of Income-tax* [1959] 35 I.T.R. 594 (S.C) and *Killich Nixon & Co. v. Income-tax Commissioner, Bombay* [1967] 66 I.T.R. 714 (S.C.).

6. The result of the aforesaid analysis is that the Tribunal's order, which is the result of an error of record, cannot be accepted. We accordingly answer both the questions in the affirmative.

7. The duty of the Tribunal is to dispose of the case in accordance with the answer given by the High Court. Section 24(5) of the Orissa Sales Tax Act lays down that the High Court upon hearing any such case shall decide the question of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the Tribunal a copy of such judgment under the seal of the High Court and the signature of the Registrar and the Tribunal shall dispose of the case accordingly. Thus the Tribunal would dispose of the appeal in conformity with the judgment of the High Court. It follows that before the Tribunal passes an order disposing of the appeal, there would normally be a hearing. The scope of the hearing would of course depend upon the nature of the order passed by the High Court. If the High Court agrees with the view of the Tribunal the appeal may be disposed of by a formal order; but if the High Court disagrees with the Tribunal on a question of law, the Tribunal must modify its order in the light of the order of the High Court. If the High Court holds that the judgment of the Tribunal is vitiated because it is based on no evidence, or because the judgment proceeds upon a misconstruction of the statute, the Tribunal is bound to dispose of the case in conformity with the opinion of the High Court, on the merits of the dispute after rehearing the appeal. In all cases, however, opportunity must

be given to the parties of being heard. The aforesaid position of law is no longer in doubt. The matter is concluded by Commissioner of Wealth-tax, West Bengal v. Tungabhadra Industries, Calcutta [1970] 75 I.T.R. 196 (S.C), where their Lordships expressed a similar view under Section 27(6) of the Wealth-tax Act, 1957, corresponding to Section 24(5) of the Orissa Sales Tax Act.

8. The Tribunal, after the case goes back, would hear the parties and decide whether the accounts have been properly maintained. If there was suppression of relevant materials and if the enhancement is justified, the Tribunal would further decide whether there was a reasonable nexus between the suppression and enhancement.

9. In the result, the references are accepted, the questions are answered in the affirmative and the case is remanded to the Tribunal for disposal as indicated above. There will be no order as to costs. Reference fees be refunded.

S. Acharya, J.

I agree.

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