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Court : Kerala

Decided On : May-23-1977

Reported in : (1977)6CTR(Ker)197

Appeal No. : TRC No. 6 of 1975

Appellant : M. O. John

Respondent : State of Kerala.

Judgement :

Kochu Thommen, J. - The question arising for our consideration in this Tax Revision Case is :

'Whether on the facts and in the circumstances of the case the addition of Rs. 93,333/- to the turnover in food-grains is legally correct ?'

2. The assessee is a dealer in foodgrains and other articles. He returned a taxable turnover of Rs. 98,638.77 for the assessment year 1967-68. The Sales-tax Officer rejected his accounts in view of an unexplained investment of Rs. 10,000/-, and a credit of Rs. 4,000/- which stood in the name of his deceased mother. These sums had been treated by the Income-tax Officer as income falling under the head 'other sources' in the assessment proceedings under the Central Income-tax Act for the relevant assessment year. The total sum of Rs. 14,000/- was treated by the Sales-tax Officer as profit from undisclosed transactions and as profit from undisclosed transactions and the turnover of such transactions was estimated at Rs. 93,333/-.

Adding this amount to the declared turnover for the year at Rs. 1,91,972/-. The order was confirmed by the Appellate Assistant Commissioner, Trichur. On further appeal, the Kerala Sales-tax Appellate Tribunal, by a majority, held that the Sales-tax Officer was perfectly justified in treating the aforesaid amount of Rs. 14,000/- as profit arising from business dealings which had not been accounted for. Accordingly the appeal was dismissed. The Tribunal in arriving at this conclusion, followed a decision of the Madhya Pradesh High Court in arriving at this conclusion, followed a decision of the Madhya Pradesh High Court in Girdhari Lal, Nannelal vs. Sales-tax Commissioner, M.P. It is significant to note that there is no evidence whatsoever to connect the sum of Rs. 14,000/- with any business transaction which is exigible to tax under the Kerala General Sales-tax Act, 1963. Neither the Sales-tax Officer nor the Appellate Authorities could point out any nexus between this sum and a business transaction which is liable to sales-tax. The Sales-tax Officer stated in his assessment order dated 5-2-1969 that there was no direct evidence to show that the income was received from trade in foodgrains. He, however, pointed out :

'But from the circumstances of the case it can safely be assumed that it could only be from food-grains as the transactions are unverifiable and as the assessee could not openly do business in foodgrains on a large-scale.'

This, in our view, is at best a surmise for which there is no basis. Similarly the Appellate Assistant Commissioner stated :

'The appellant is a dealer in foodgrains and provisions and the only source from which he could have obtained income is from clandestine dealings in foodgrains during the period of control and there is nothing wrong in holding that the appellant would have suppressed his sales of food-grains. In any case the appellant has not succeeded in establishing that the income is not from dealings in food-grains.'

The Appellate Assistant Commissioner has thus come to a finding without any evidence and has wrongly placed the burden of proof upon the assessee.

3. The decision of the Madhya Pradesh High Court, which was followed by the Chairman of the Tribunal, was considered in appeal by the Supreme Court. See

Girdhari Lal Nanne Lal vs. Sales-tax Commissioner. In allowing the appeal, the Supreme Court stated :

'In order to impose liability upon the appellant-firm for payment of sales tax by treating that amount as profits arising out of the undisclosed sales of the appellant, two things had to be established, (i) the amount of Rs. 10,000/- was the income of the appellant-firm and not of Kanji Deosi or his wife, and (ii) that the said amount represented profits from income liable to sales tax and not from other sources. Theonus to prove the above two ingredients was upon the department.'

The Supreme Court has thus categorically laid down that the burden is upon the Department to show that an unexplained credit entry represented profits from income realised as a result of transactions liable to sales-tax. The Court further pointed out that the approach of the Sales-tax Officer, in regard to such unexplained amounts, ought not be the same as that of the Income-tax Officer. The Court said :-

'The approach which may be permissible for imposing liability for payment of income-tax in respect of the unexplained acquisition of money way not hold good in sales-tax cases. For the purpose of income-tax it may in appropriate cases be permissible to treat unexplained acquisitions of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales-tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources.'

The burden of proving this, as pointed out earlier, is not on the assessee but on the department.

4. In the present case there is no evidence whatever to connect the sum of Rs. 14,000/- with a business transaction that is liable to sales-tax Officer and the Appellate Authorities were in our view, not justified in coming to the conclusion that the assessee had derived this amount from sale transactions which are liable to sales-tax. Their conclusions are not supported by any evidence whatsoever and

are therefore unsustainable in law. In the circumstances we are of the view that the addition of Rs. 93,333/- to the turnover in food-grains in the assessee's business for the relevant assessment year is incorrect. Accordingly the order of the Tribunal under revision is set aside and the Tax Revision Case is allowed with costs. Counsel's fee Rs. 150/-.

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