

**SUPREME COURT OF INDIA**

P.C. Ittymathew & Sons

Vs.

Dy. Commissioner Of Sales Tax (Law)

(S.P. Bharucha, N. S. Hegde and Ruma Pal JJ.)

02.02.2000

**ORDER**

**S.P. BHARUCHA, J.**

1. The assessee is the appellant. He disclosed an additional income of Rs. 1,47,979.69p to the Income Tax authorities for the Assessment Year 1984-85. Upon the basis of this disclosure, the assessing officer for the purposes of sales tax said:

The dealer had disclosed an additional income of Rs. 1,47,979.69p consequent on raid by the Income-tax authorities on the premises of the dealer on 21.2.85. This is the profit derived from unaccounted sales. The profit works out to 1.93%. Based on this turnover will be estimated at Rs. 78,67,305/-.

His conclusion was sustained by the first appellate authority but set aside by th.3 Tribunal. The Tribunal relied upon this Court's decision in [Girdhari Lal Mannelal v. The Sales Tax Commissioner, Madhya Pradesh](#) (39 S.T. C.30) wherein it was held that it was for the Sales Tax authorities to show the existence of material to indicate that the acquisition of money by the assessee had come from transactions liable to sales tax and not from other sources. The Tribunal found that the Sales Tax authorities in the present case had not established that the income disclosed by the assessee had been derived from business transactions liable to sales tax. The presumption of the assessing authority in this behalf was belied by the fact that the Income Tax authorities had accepted the sales turnover declared by the assessee.

2. The Revenue preferred a civil tax revision case before the High Court of Kerala against the order of the Tribunal and the High Court reversed the same.

3. It was submitted by the learned counsel for the assessee that no question of law was involved and that, therefore, the High Court had no jurisdiction to set aside the order of the Tribunal which was essentially a decision on fact. In any event, the order of the High Court was erroneous having regard to the fact that the assessing authorities had not been able to show that the additional income had come from transactions liable to sales tax.

4. Clearly, no question of law arose. The High Court was, therefore, not entitled in a tax revision case to upset the order of the Tribunal. Apart from that, the High Court does not appear to have noticed that the assessing authority and relied on no material which indicated that the additional

income had come from transactions that were liable to sales tax. It was merely a presumption on his part and that presumption could not rightly, be drawn.

5. Insofar as the consignment sale is concerned, there is an order of remand. We do not think it necessary to interfere therewith.

6. The civil appeal is allowed. The order under appeal is set aside. The decision of the Tribunal is restored.

7. No order as to costs.