SUPREME COURT OF INDIA

Nathu Ram Ramesh Kumar

Vs.

Commr.of Delhi Value Added Tax

C.A.Nos.4465-4468 of 2014

(Anil R. Dave and Dipak Misra JJ.)

09.04.2014

JUDGMENT

ANIL R. DAVE, J.

1. Leave granted.

2. Being aggrieved by the judgment delivered by the High Court of Delhi in STC Nos.1 and 2 of 2008 and CM Nos.2161 and 2162 of 2008, these appeals have been filed by the appellant assessee. The assessee has been aggrieved by the assessment orders as well as the orders of penalty. As both the appeals pertain to the assessee-appellant, at the request of the learned counsel, they were heard together.

3. The facts giving rise to the present litigation, in a nutshell, are as under:

> The appellant - assessee has been registered under the Delhi Sales Tax Act, 1975 (hereinafter referred to as the Act) as well as under the Delhi Value Added Tax, 2004 and is carrying on the business of manufacture and sale of sweets, namkeens and other eatables. On 9th March, 2000 and 10th March, 2000, officers from the office of the Commissioner of Sales Tax had visited business premises of the appellant-firm and had recorded statements of partners of the appellant-firm and had also checked total cash inflow on those days. On those two days, sale proceeds were Rs.2,13,974/- (Rupees two lac thirteen thousand

nine hundred and seventy four only) and Rs.1,98,009/- (Rupees one lac ninety eight thousand and nine only) respectively.

At the time of assessment for the Assessment Year 1999-2000, it was found by the Assessing Officer that the assessee had not shown its income correctly and therefore, the Assessing Officer had taken into account the facts gathered on the aforesaid two days for the purpose of assessing total sales. On the basis of the gross receipts of sale effected on the aforestated two days, average receipts per day had been calculated and the Assessing Officer had come to a conclusion that the sale proceeds of the assessee for the relevant year was Rs.7,51,86,350/- (Rupees seven crore fifty one lacs eighty six thousand three hundred and fifty only). Before coming to the said conclusion, the assessee was given an opportunity to explain its books of accounts, as there was substantial discrepancy between the receipts shown in the books of accounts and the gross receipts which were actually found on the aforestated two days. It was, prima facie, believed by the Assessing Officer that the assessee had not given accurate details about the gross receipts.

Similarly for the Assessment Year 2000-2001, on 24.10.2000 also there was a surprise visit to the place of business of the appellant-assessee and even on that day it was found by the officers that there was discrepancy in cash on hand and cash as per books of accounts. Moreover, they also found that there was discrepancy in stock as the actual stock and stock as per books of accounts were not same. Thus, once again it was found that the books of accounts maintained by the appellant-assessee were not in order.

In spite of issuance of notice and giving hearing to the appellant- assessee firm, sufficient explanation was not provided to the Assessing Officer and therefore, assessment for Assessment Year 1999-2000 was made under Section 23(3) of the Act. As the Assessing Officer had come to a conclusion that correct books of accounts had not been maintained, penalty was also imposed upon the assessee by assessment order dated 31.12.2001 for the said assessment year. Similarly, for the Assessment-Year 2000-2001 also, the books of accounts had not been maintained properly. In view of the said fact the Assessing Officer had taken into account figures of sales arrived at by him for the Assessment Year 1999-2000 and had added 10% thereon as that was considered to be a normal

growth of the business in normal circumstances, thereby arriving at gross sales for the Assessment Year 2000-2001.

Being aggrieved by the above mentioned assessment orders, the assessee had preferred appeals before the Commissioner of Sales Tax, which had been dismissed by an order dated 13.11.2003 and therefore, the assessee had preferred appeals before the Appellate Tribunal of Sales Tax, which had also been dismissed by a common order dated 03.11.2004.

Thereafter, the appellant-assessee had approached the High Court by filing STC Nos.1 and 2 of 2008. The High Court was also pleased to dismiss the said Reference Cases after giving hearing to the concerned parties by a common judgment dated 19th May, 2009 as no question of law was involved in the said cases. The said judgment has been challenged in the present appeals.

4. The learned counsel appearing for the appellant-assessee had mainly submitted that the assessment orders were passed under Section 23(3) of the Act as the authorities were not satisfied with the details furnished by the appellant-assessee. In the aforestated circumstances, it was obligatory on the part of the assessing authority to issue notice and give hearing to the assessee so that appropriate explanation could be given to the authorities by the assessee. As no notice was given to the assessee before the assessment, the impugned assessment orders as well as the orders passed in appeal are bad in law. Thereafter, it had been submitted that merely on the basis of two visits to the business place of the appellant-assessee, the Assessing Officer could not have jumped to a conclusion that the sale proceeds received on those two days were standard or normal and therefore, on the basis of those sale proceeds, assessments could not have been made. It had been further submitted that in the business of the assessee, being a dealer in eatables, normally there would be huge variation in sale on different days. On a particular day, sale proceeds could be more than rest of the days and therefore, on the basis of some selected days, i.e., 9th and 10th March, 2000 and 24th October, 2000, the Assessing Officer could not have made the assessments.

5. It had been further submitted that the penalty imposed upon the appellant-assessee was based on guess work or conjectures. There was no basis for the Assessing Officer to believe that the books of accounts maintained by the assessee were not correct and the facts found on those selected days when there were surprise visits by the officers

of the Department were normal, i.e., the assessee was every day getting the same amount by way of sale of eatables. Moreover, adjustments regarding the amount of tax recovered had not been made while calculating the estimated sales.

6. For the aforestated submissions, the learned counsel appearing for the appellant-assessee had submitted that the judgment of the High Court, confirming the assessment orders, should be quashed and set aside and even the orders imposing penalty should be quashed.

7. On the other hand, the learned counsel appearing for the Revenue had submitted that it was apparent that the appellant-assessee was not correctly showing all transactions in his books of accounts. The said fact could be very well seen when the representatives of the Department had visited the place of business of the assessee on 9th and 10th March, 2000 and on 24th October, 2000. The sale proceeds, which had been meticulously recorded on those two days in accounting year 1999-2000 were Rs.2,13,974/- and Rs.1,98,009/- respectively whereas total sales for the said year was much less. In the aforestated circumstances, average sale of the aforestated two days was calculated and multiplying the same by 365 (days of the year), the Department had arrived at a figure of estimated sales for the year 1999-2000 and similarly after making a reasonable addition of 10%, sale for the Assessment Year 2000-2001 had been arrived at.

8. In spite of the notice issued to the assessee for giving explanation with regard to the discrepancy, the assessee could not give any satisfactory explanation and therefore, the Assessing Officer was constrained to presume that the books of accounts were not maintained properly by the appellant- assessee.

9. As the Assessing Officer had come to the conclusion that the books of accounts had not been properly maintained with an oblique motive, penalty was rightly imposed upon the assessee and the quantum of penalty imposed was also just and proper.

10. For the aforestated reasons, the learned counsel appearing for the Revenue had submitted that the assessment orders, which had been affirmed by all the authorities below and the High Court are just and proper and they need not be interfered with.

11. We had heard the learned counsel for the parties and had also considered the

relevant orders as well as legal submissions made by the counsel.

12. We do not find any substance in the submissions made on behalf of the appellant-assessee and therefore, we are not inclined to allow the appeals for the reasons stated hereinbelow:

(i) The appellant-assessee is making and selling sweets, namkeens and other eatables. It appears from the record that when an individual customer was buying eatables of a nominal value, possibly bill was not being issued. There was no specific method whereby each and every receipt from the buyers was recorded by the assessee. In the aforestated circumstances, possibly due to some doubt, which might have arisen, a special search or inspection was made on 9th and 10th March, 2000 and total sale proceeds had been meticulously recorded and calculated, which have been stated hereinabove. On the basis of the receipts of those two days, considering them as a representative sample, the Assessing Officer had come to a conclusion that the sale proceeds or sales of the appellant-assessee for the year should have been a particular amount and, in fact, the amount reflected in the books of accounts was much less than the calculations arrived at by the Assessing Officer.

(ii) It is pertinent to note that the Assessing Officer did not jump to a conclusion without any rhyme or reason. The Assessing Officer had called upon the assessee to explain the difference but the assessee could not or did not give sufficient explanation as to how the total sale on the basis of the average daily sale arrived at by the Assessing Officer was not correct. One can very well presume that in case of a dealer dealing in eatables, and specially sweets and namkeens, on a particular day like a holiday or on account of some festivity, total sale can be more than other days. For example, sale would normally be more on Saturdays, Sundays and other holidays because more people would be visiting such eateries. In the instant case, had those two days, when business premises of the assessee was inspected and the sale proceeds were recorded, been some special days, the assessee could have placed those special facts before the Assessing Officer, but nothing of that sort was done. In the circumstances, in our opinion, the Assessing Officer had rightly come to the conclusion that the books of accounts maintained by the assessee were not showing correct sales and therefore, the conclusion arrived at by him cannot be

said to be incorrect. There was a reasonable basis for him to arrive at the said conclusion, especially when the assessee did not offer any satisfactory explanation in spite of issuance of notice.

(iii) The submission made by the learned counsel appearing for the appellant-assessee that no notice was issued, as required under the Act, before framing the assessment is also not correct. The assessment orders refer to notices issued to the assessee and they also record the fact that no satisfactory explanation had been offered by the appellant-assessee to make out a case that there was some special reason for which sale of sweets, namkeen etc. on 9th and 10th March, 2000 was exceptionally more.

(iv) Once the Assessing Officer had rightly come to the conclusion that the books of accounts were not properly maintained and were not reflecting each and every transaction, in our opinion, the Assessing Officer had rightly come to a conclusion that total possible sale was much higher and the conclusion so arrived at was based on sound reasons. We also do not agree with the learned counsel for the assessee that proper adjustments regarding sales tax had not been made by the Assessing Officer in the process of the assessment.

(v) Once it is found that with some oblique motive, effort was made to show lesser sale proceeds than the actual, the orders imposing penalty can not be questioned. We are, therefore, not inclined to interfere even with the quantum of penalty.

13. For the aforestated reasons, in our opinion, the impugned judgment delivered by the High Court is just and proper, which does not require any interference and therefore, the appeals are dismissed with no order as to costs.