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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ST.APPL. 84/2014

TANYA ENTERPRISES ..... Petitioner

Through: Mr. A.K. Babbar, Advocate along with Mr. Surender Kumar, Advocate.

versus

COMMISSIONER OF VALUE ADDED TAX,DELHI..... Respondent

Through: Mr. Peeyoosh Kalra, ASC (Civil) along with Mr. Shiva Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **10.08.2016**

Admit. With the consent of the learned counsels, we have heard the matter.

The question of law which arises for consideration is as follows:-

> *"Did the Tribunal fall into error in upholding the further addition of Rs. 22,56,342/- over and above the primary addition of an identical amount, in the best judgment assessment of the Sales Tax Officer under Section 23 of the Delhi Sales Act.?"*

The brief facts are that the appellant was a dealer, whose business premise was subjected to a survey on 09.02.2001 by the Department of Trade & Taxes, New Delhi. During the course of survey, the survey team found a variation of about ₹ 80,068.03 in cash and ₹ 2,68,138/- in stock; two notebooks and 81 loose papers were also discovered in the premises. All these were seized. This led to the assessing authority rejecting the books of account, and carrying out a best judgment assessment. An addition to the sales tax returns, to the extent of ₹ 2256342/- was made. The adjudicating officer i.e. the STO included, in addition to the said amount, a further identical amount on the basis of Section 23(3) of the Delhi Sales Act. The further addition was challenged by the assessee before the First Appellate Authority and the VAT Appellate Tribunal, unsuccessfully. Both the authorities rejected the appellant's contention but held that whilst the inclusion of the amount of ₹ 2256342/-, based upon the materials found, could not be questioned, the further addition of that amount on the basis of pure guess work was unwarranted. The Tribunal in the impugned order was of the opinion that there was sufficient authority to state that the best judgment assessment, as long as it has reasonable nexus to the available material and the circumstances of the case, cannot be disturbed lightly.

Learned counsel for the appellant relies upon the authority of the Karnataka High Court in ***State of Karnataka vs. N.P. Bharmaiah & Sons,*** *[2011] 41 VST 498 (Karn).* In that case, the assessee/respondent had contended, almost identically as in the present case, that the addition consequent to the survey/seizure of a sum of ₹ 11,77,632/- was based upon the material found during inspection whereas the addition of further amount – the total aggregating to ₹ Rs. 24,50,076/- was unwarranted as it was not based upon any findings.

Mr. Peeyoosh Kalra, learned counsel for the respondent urges that there is no infirmity in the tribunal order which has based its reasoning on previous authority - a long line of judgments for the proposition that on the basis of suppressed materials discovered later by the authorities, reasonable guess work up to the limit prescribed by the statute is permissible. It is submitted that Section 23(6) of the DST Act caps the extent of the addition in total to twice the amount of what is deemed to have been suppressed.

As is evident, the question posed for adjudication before this court is narrow i.e. whether the assessing authority under Section 23(3) of the DST Act can invariably add an amount equivalent to the amount concealed from the gross turnover at the time the dealer originally files its returns. Whilst, there cannot be any quarrel regarding the statute which authorises the addition up to twice the suppressed amount, we are of the opinion that to reach that limit, there has to be some reasonable basis. The Karnataka High Court in *N.P. Bharmaiah (supra)* case when confronted with an identical situation, stated as follows:

> *"On perusal of the material on record, we find that the respondent had accepted the stock difference and agreed to addition proposed by the intelligence authority at Rs.11,77,632 but had not agreed to further addition of Rs.11,77,632 made by the assessing authority which was confirmed by the first appellate authority. However, the Tribunal has categorically recorded that the assessing authority while basing its assessment on the inspection report furnished by the Assistant Commissioner of Commercial Taxes (Intelligence) arrived at a turnover of Rs.24,50,076*

which is based on pure guess work and on which penalty at the rate of 1.5 per cent was levied. The tribunal has also recorded that the finding of the intelligence authority is at Rs.10,08,006. If that be so then there was no other material for making the further additions. The Tribunal has further opined that if the detection of stock difference was to an extent of Rs.10,10,571 and the intelligence wing estimated the sale of tax-suffered goods for resale tax based on the deficit in stock noticed at the time of inspection in respect of which reasonable gross profit of suppressed sale of tax-suffered goods was estimated at Rs.1,77,632. If that be so there was no material to make further estimation towards the turnover to an extent of Rs.11,77,632 over and above the turnover reported by the intelligence. Therefore, while upholding that portion of the order of the first appellate authority regarding the estimation of sales and the levy of penalty under section 12 (4) of the Act, the Tribunal allowed the appeal in part.

Having regard to the reasons given by the Tribunal and the fact that no material was placed on record to show the further addition made the same is arbitrary and therefore, we agree with the reasons given by the Tribunal and confirm the order."

In the present case as well, beyond basing himself upon the outer limit prescribed by the statute i.e. twice the addition after calculating the real turnover, the STO has not furnished any reason whatsoever. This in our opinion leads to a rather anomalous situation because for the basic addition of ₹ 22,56,342/-, there is justification and reason in the form of materials; however, to arrive at a further identical suppressed amount the STO should have had some modicum of material.

Its absence, in the opinion of this court, cannot authorise the STO in every case to reach the statutorily prescribed outer limit.

For the above reasons, the appeal is allowed to the extent that the arbitrary addition of ₹ 22,56,342/- over and above the suppressed material has been made. The other findings of the lower authorities are however left undisturbed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 10, 2016
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