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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 5032 of 2006

- Mahesh Sweets, Taarbahaar Bilaspur (CG) a proprietory concern through its Proprietor Mahesh Chouksey, S/o Ramdayal Chouksey, aged about 58 years, resident of Tarbahar, Indra Colony, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. Commercial Tax Officer, Circle -I, Bilaspur (CG)
2. Additional Commercial Tax Officer, Circle-I, Bilaspur (CG)
3. Deputy Commissioner of Commercial Tax, Bilaspur (CG)
4. State of Chhattisgarh, through Secretary, Department of Commercial Tax, DKS Mantralaya Bhavan, Raipur (CG)

---- Respondent

WP No. 6570 of 2006

- Mahesh Sweets, Taarbahaar Bilaspur (CG) a proprietory concern through its Proprietor Mahesh Chouksey, S/o Ramdayal Chouksey, aged about 58 years, resident of Tarbahar, Indra Colony, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. Commercial Tax Officer, Circle -I, Bilaspur (CG)
2. Additional Commercial Tax Officer Circle-I, Bilaspur (CG)
3. Deputy Commissioner of Commercial Tax, Bilaspur (CG)
4. State of Chhattisgarh, through Secretary, Department of Commercial Tax, DKS Mantralaya Bhavan, Raipur (CG)

---- Respondent

For Petitioner : Shri HB Agrawal, Sr. Adv. with Shri Pankaj Agrawal, Adv.
For Respondents : Shri Alok Bakshi, Additional AG.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/03/2019 :

1. Challenge in these writ petitions is to the re-assessment orders and the consequent revisional orders in respect of the provincial tax and entry tax for the assessment years 2000-01 and 2001-02. In the original assessment order for the year 2000-01, the petitioner was imposed provincial tax of Rs.27,849/- and entry tax of Rs.4,140/- whereas under the re-assessment order dated 30.12.2005, the petitioner has been imposed provincial tax liability of Rs.2,53,204/- and entry tax of Rs.23,644/- together with penalty of Rs.2,76,848/- for the assessment year 2000-01. For the assessment year 2001-02, the tax liability under the re-assessment order was Rs.78,709/-, out of which tax already deposited at Rs.44,662/- has been adjusted and the net tax liability has been assessed at Rs.34,047/-. The same amount of penalty has also been imposed. By another order (Annexure-P/5) in WP No.6570/2006, the tax liability of Rs.4,200/- has been imposed on the petitioner.
2. The facts relevant for disposal of the writ petitions are that the petitioner is engaged in manufacture and sale of Sweets, Namkeen, Tea, Coffee, Snacks etc. at Tarbahar, Bilaspur. His premises were raided on 16.10.2000 and account books with other documents were seized. However, on account of theft in the office of Commercial Tax Officer, Bilaspur, the documents were not available at the time of passing of the assessment order. The Assessing Officer (for short 'the AO') passed an order on 10.11.2003 for both the years. Neither the

petitioner nor the Sales Tax Department preferred any Appeal or Revision against the original assessment order. On 7.4.2004, the Additional Commercial Tax Officer, Bilaspur, Circle-1 issued notice to the petitioner under Section 28 (1) of the CG Commercial Tax Act, 1994 (for short 'the Act') for reopening of the assessment on the basis of preliminary report dated 16.10.2000. The petitioner objected to the said initiation of the re-assessment proceeding by submitting reply which was rejected on 23.8.2005 vide Annexure-P/5. Thereafter the re-assessment order was passed for both the years on 30.12.2005. The Revisional Authority has passed a common revisional order for all the four matters i.e. two cases of provincial tax for 2000-01 & 2001-02 and two cases of entry tax for the years 2000-01 & 2001-02. The Revision Applications preferred by the petitioner has been dismissed by the Revisional Authority.

3. Having heard learned counsel for the parties, I am of the considered view that the Writ Petitions deserve to succeed for the reasons infra. Re-assessment notices clearly mention that reopening under Section 28(1) is on the basis of preliminary report dated 16.10.2000, however, when the petitioner objected to the said ground of reopening by filing reply on 8.8.2005 on submission that preliminary report was already available on the date of original assessment, therefore, it is a case of change of opinion, the AO opined in its order dated 23.8.2005 that irrespective of the preliminary report, there is sufficient material in the shape of scrutiny report dated 7.2.2005 for reopening of the assessment under Section 28 (1).

4. Section 28 of the Act provides for assessment of turnover escaping

assessment, meaning thereby that if due to misrepresentation or concealment or fraudulent act of the assessee, a particular turnover has escaped assessment or assessed at a lower rate, re-assessment can be done. What is more apparent is that re-assessment is based on scrutiny report emanating from the office of Divisional Deputy Commissioner, Commercial Tax, Bilaspur on 7.2.2005 under the signatures of Commercial Tax Officer, Scrutiny Cell, Bilaspur. Indisputably, this document was not in existence on 7.4.2004 when the re-assessment notice was issued by the AO. In the absence of scrutiny report dated 7.2.2005, the only basis for reopening was the preliminary report dated 16.10.2000. However, this report was already available with the AO when the original assessment order was passed on 10.11.2003. Thus different interpretation of the preliminary report or ignorance of this report by the AO at the time of first assessment could not be a basis for re-assessment of turnover escaping assessment. As a matter of fact, there was nothing which escaped assessment of the AO at the first instance because all the material was available with the AO. The only new document which came into existence after the first assessment order was the scrutiny report dated 7.2.2005. However, assessment or best judgment assessment is based on documents of sale and purchase and not merely on the basis of some subsequently prepared scrutiny report. For re-assessment there has to be some turnover which has escaped assessment but not on the basis of some report without there being documents proving such turnover.

5. In my considered opinion, re-assessment was to be made on the

basis of reasons mentioned in the re-assessment notice and not on the basis of any subsequently prepared report.

6. Therefore, both the Writ Petitions deserve to be and are hereby allowed. The impugned orders imposing provincial tax and entry tax for the assessment years 2000-01 and 2001-02 are set aside. Resultantly, the original assessment order shall stand revived.

Sd/-
Judge
(Prashant Kumar Mishra)

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