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W.P. No. 42526 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM :

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.42526 of 2006
and M.P.No.1 of 2006

M/s.Jambu Associates,
rep. by its Proprietor J.Rajendran,
50, Lakhminagar Main Road,
Tiruppur, Coimbatore District.

.. Petitioner

Versus

1. Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
Commercial Taxes Buildings,
Coimbatore-18.

2. The Deputy Commercial Tax Officer,
Lakshminagar Assessment Circle,
Tiruppur.

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records of the First Respondent in its order in CTA No.198/2003 dated 28.03.2006 and quash the same as illegal.



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For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.T.N.C.Kaushik (R1)
Additional Government Pleader

ORDER

S.VAIDYANATHAN,J
and
C.SARAVANAN, J

The Petitioner has filed this Writ Petition challenging the Impugned Order dated 28.03.2006 passed by the 1st Respondent in CTA. No.198/2003.

2. The Petitioner had suffered an assessment order in the hands of the 2nd Respondent vide order dated 26.06.2001 for the Assessment Year 1999-2000. Certain additions were made based on the slips and books recovered from the petitioner. Aggrieved by the aforesaid order, the Petitioner preferred Appeal by the Appellate Assistant Commissioner Commercial Tax, Pollachi in Appeal No.156 of 2001. The said authority by order dated 17.03.2003 partly allowed and partly dismissed the petitioner's Appeal. Aggrieved by the same, the Petitioner preferred Second Appeal before the 1st Respondent in C.T.A.No.198/03. The State



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of Tamil Nadu, represented by the Deputy Commissioner (CT),

Coimbatore preferred Appeal in C.T.SA.No.293/03 which have

culminated in the Impugned Order dated 28.10.2006. Relevant portion of

the Impugned Order reads as under:

"8. We have considered the arguments of both the sides and also verified the connected records. It is seen from the records that the original assessment on the appellant/respondent was made under section 12 (1)(a) of the TNGST Act. The place of business was inspected by the officers of the department on 23.3.00. At the time of inspection they had verified the stock and found difference in the same valued at Rs.1,72,910/. It was explained by the appellant/respondent before the first appellate authority that the stock difference had been arrived at adopting incorrect details of opening stock and also purchase and sales. The inspecting officers had also adopted gross profit 20% instead of the correct gross profit of 12.17%. The first appellate authority had got the above details verified through the learned Departmental Representative and had found that the claim of the appellant/respondent was correct, he had thus found that the stock difference was arrived at adopting incorrect details and had therefore set aside the assessment on the same. The department seeks for restoration of assessment without giving any specific reasons or argument to disprove or discredit the findings recorded by the first appellate authority. The appellant/respondent had not countered the fact that there was incorrect adoption of details of opening stock, purchases,



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sales and also gross profit. When all these details were found to be incorrect, the consequential difference is also not correct and not sustainable. We find no reason to interfere with the order of the first appellate authority. With reference to the entries in slip no.2, 5 and 6, the first appellate authority had confirmed the assessment on the turnover of Rs.2,23,711/- stating that the appellant/dealer had not raised any argument. But as rightly pointed out by the learned Authorised Representative for the appellant/dealer, he had raised objections before the first appellate authority and the same had not been properly considered. As regards the entries in slip no.2 and 6, the explanation of the appellant that he had advanced an amount of Rs.1,95,000/- to his driver for the purchase of second hand van and to substantiate the claim, he had filed a xerox copy of the Day Book page to show that there was sufficient as a cash balance. But the explanation of the appellant is not acceptable. The availability of the cash balance as per accounts on a particular day could not be a ground to treat the transaction of sale recorded in the recovered records as an advance made for purchase of van. The appellant had conveniently omitted to furnish the details of van such as Make, Model, Owner etc. and he also had not offered proper explanation as to why the van was found to be not worthwhile after satisfactory verification of the vehicle and fixing its value for purchase. The appellant had fixed the value and also the date of purchase. What was found worthwhile for an amount of Rs.1,95,000/- is claimed to be worthless on the next day itself. We find that the first appellate authority is correct in sustaining the assessment on the turnover of Rs.1,95,000/-

As regards the entries in slip no.5 and 6, it is



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the claim of the appellant/dealer that he had raised bill no.220 and 220-A on 21.03.00 and brought the same to accounts. But it is to be pointed out that the place of business was inspected on 23.3.00 and no books of accounts other than the delivery notes were produced before the inspecting officers. Even the sale bill books were not produced before the inspecting officers. At the time of processing, the appellant/dealer had produced only bill no.220 dated 21.3.00 and he had not produced bill no.220-A. In respect of slip no.6, though the appellant had claimed before the processing officer that he had raised bill, he had not produced it. When the other bills are typed copies, this bill is in manuscript. It is seen that the suffix 'A' is added to bill no.220 only and in respect of the other sale bills no such prefix is made and it is proved that the appellant, to escape from the liability to tax, had created bill no 220-A subsequently. Therefore it is evident that the bill no.220-A had been raised not in the regular course of business, but subsequent to processing of the records and that therefore the same was correctly treated as suppressions by the Assessing Authority and also the first appellate authority. In respect of bill no.220, with reference to slip no.5, the assessment on the turnover of Rs.11,181/- is not correct as the bill was raised in the course of business and the same cannot be treated as suppressions. The assessment of this turnover set aside. The learned Authorised Representative for the appellant/dealer had not raised any other objections with reference to other items of actual suppressions. The assessment on the same is therefore confirmed.

As regards the equal addition considered and reduced to 50% by the first appellate authority, it is the claim of the appellant/dealer that such addition is not warranted. But it is the claim



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of the Department that, the suppression of sales were found through the entries in the recovered records and the same established that the books of accounts had not been maintained correctly and completely and that such incorrect maintenance of accounts warrant further additions at equal the actual suppressions. Though the recovered records established incorrect maintenance of accounts and also suppressions, the first appellant authority is found to have sustained the assessment on a turnover of Rs.3,82,173/- towards probable suppressions. The relief granted by him is within his discretionary powers. There is also no warrant that the probable suppressions should only be at equal the actual suppressions. We therefore do not find any reason to interfere with the orders of the first appellate authority.

The next item of diute is the general addition of Rs.5,000/ made by the Assessing Authority for the defects noticed in the books of accounts. The assessment on the same had been set aside by the first appellate authority on the ground that the assessment on the actual suppressions and also the further estimations make such a further addition unwarranted. The reasons adduced by the first appellate authority for setting aside the addition of Rs.5,000/- are found to be proper and the same is upheld.

In view of the discussions above, we find that the order of the first appellate authority is in order except in respect of the assessment on the turnover of Rs.11,181/- with reference to slip no.5 and therefore uphold the same.

In the result, the Tribunal Appeal is PARTLY ALLOWED and PARTLY DISMISSED and the State Appeal stands DISMISSED."

3. The learned counsel for the Petitioner submitted that there is no



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basis on which a amount of Rs.1,95,000/- could have been added in the taxable turnover and that the amount was given to the driver for purchasing a 2nd hand van for business purpose. It is further submitted that on the date of inspection i.e., on 23.03.2000, the Petitioner had sufficient bank balance and therefore it would be incorrect to affirm there is sale suppression of rubber thread @ 12%. It is further submitted that sales turnover of Polyester yarn, Textile spares and Rubber Thread are assessed at 2%, 4% and 12% respectively. It is submitted that the Assessing Officer ought not to have levied tax at 12% on the entire turnover of Rs.1,95,000/- treating it as a sales of rubber thread at 12%. As far as additions are concerned, it is submitted by the learned counsel for the petitioner that the addition of 50% to taxable turnover in respect of slip no.5 and 6 is concerned, he further submitted that the issue is now squarely covered by the Judgment of this Court in the case of ***State of Tamil Nadu Vs. Sri Vinayaga Agencies*** reported in (2010) 27 VST 358 (**Mad**) wherein it is held as follows:-

"In the assessment order, a mere addition was made in the last column making an equal addition without giving any reasoning at all. In fact, the Assessing Authority is a quasi judicial authority, who has to give reasons for his finding. Neither any analysis nor any evaluation was made,



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but straight-away, this equal addition was made without giving any reason at all. Contrary, the assessee had given ample documents, made objections, but nothing was considered or no opportunity was given to him to put forth his explanation in regard to the equal addition at any point of time.

Even the Appellate Assistant Commissioner has not given any finding in regard to the equal addition and the relevant portion of the order is extracted as under:

"In this case, the inspecting officials though not derived variation based on physical verification, they have obtained such difference by means of trading account method, wherein the particulars are verified with reference to the correct figures taken out from the accounts of the appellants. The figures adopted in such workings were not at all incorrect as argued by the appellant in this case. Therefore, stock difference arrived in this case could not be treated as incorrect one. Therefore, assessment made on stock difference noticed in the place of business and its equal addition is sustained."

The order of the Appellate Assistant Commissioner is also an order without applying principles of natural justice, as no reason was given for his findings. The authorities, who are all quasi judicial authorities, should exercise their function in the manner known to law. Having given a clear finding both on facts and on law, he has to give reasons to sustain such equal addition, especially when the Assessing Officer had not at all given any reason and simply had adopted equal



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addition system without any basis. Aggrieved against the order of the Appellate Assistant Commissioner, the assessee filed an appeal before the Tribunal. The Tribunal has gone into detail in so far as this point of stock variation is concerned and has come to a clear conclusion, which reads as follows:

"11. Coming to the addition of equal amount for probable omission, the argument of the appellants that there is no subsequent inspection during 1994-95 and there is no continuous pattern of suppression or similar pattern of suppression involved in arriving the stock variation noticed at the time of inspection is well founded because of the fact that the stock variation was only arrived after taking into consideration of the opening stock as on 01.04.1994, purchases and sales upto the date of inspection, which is the cumulative effect of alleged suppression right from the period from 01.04.1994 to till the time of inspection. Moreover, the stock variation was arrived only on the basis of money value of the goods and not on the quantitative basis. Under the above circumstances, we feel that no further addition is required for the stock variation arrived by the trading account method. It is rightly held by the Hon'ble Madras High Court in the case of T. Singaravelu reported in 103 STC 543 that in the absence of any continuous pattern of suppression or similar pattern of suppression or in the absence of any brought forward entries, the further addition for the estimated suppression for probable omission cannot be made. Hence, following the principles held by



the Hon'ble Madras High Court in the case referred supra, we are of the view that no further addition is required in this case with reference to the circumstances stand above. Accordingly, we set aside and delete the addition of equal amount of Rs. 1,86,081/- and allow this portion of the appeal."

The Tribunal has, therefore, rightly applied its mind, verified the contents, compared the details and finally given a finding that the stock verification was arrived at only on the basis of money value of the goods and not on the quantitative basis, which has not at all been taken into consideration either by the Assessing Officer or the first appellate authority in deciding or in coming to the conclusion in so far as the stock variation is concerned.

We see no reason to interfere with the findings of the Tribunal and accordingly, the questions of law are answered against the Revenue and in favour of the assessee. The revision fails and the same is accordingly dismissed. No costs."

4. Opposing the contention of the learned counsel for the Petitioner, the learned Additional Government Pleader for the 2nd Respondent submitted that the present Writ Petition is devoid of merits as the Impugned Order of the Tribunal is well reasoned. He further submitted that the Tribunal being the ultimate fact finding authority has arrived at a right conclusion and the contentions raised by the learned



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counsel for the Petitioner in this Writ Petition is with regard to factual aspects which cannot be raised under Article 226 of Constitution of India.

5. We have considered the arguments advanced by the learned counsel appearing on either side.

6. We are of the view that petitioner has not made out any case for interference of the order of the Tribunal, upholding the order of the Assessing officer, by reversing the order of the Appellate Commissioner, in so far as addition of Rs.1,95,000/- and therefore to that extent we are not inclined to interfere with the order of the learned Tribunal. However, as far as addition of 50% of the Assessing Authority is contrary to the law settled by this Court in the Judgment stated supra.

7. Under such circumstances, we are inclined to order deletion of 50% as ordered by the Assessing authority.

The Writ Petition is partly allowed. The Second Respondent is directed to issue a fresh order calculating the tax liability and a proportionate penalty within a period of three months from the date of



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receipt of a copy of this order. No costs. Consequently, connected

Miscellaneous Petition is closed.

[S.V.N., J.] [C.S.N., J.]
26.10.2022

Index : Yes / No
Internet : Yes/No
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To

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