THE HON'BLE SRI JUSTICE T. VINOD KUMAR
AND
THE HON'BLE SMT JUSTICE P. SREE SUDHA

TRC. No.s 98 and 99 of 2004

COMMON ORDER:(*per the Hon'ble Sri Justice T. Vinod Kumar)*

1. These Tax Revision Cases arise out of the common order of the Sales Tax Appellate Tribunal (for short 'the Tribunal'), in TA. No's 400 and 401 of 2001, dt.15.11.2003, for the assessment years 1994-95 and 1995-96, respectively, under the provisions of the APGST Act, 1957 (for short 'the Act'), and hence are being disposed by the common order.

2. The Revenue-State is the petitioner in both the revisions filed being aggrieved by the order of the Tribunal, whereby it held that the order passed by the Joint Commissioner, dt.02.02.2001, in exercise of revisionary powers under Section 20(2) of the Act, setting aside the order of the Appellate Deputy Commissioner and restoring the re-assessment orders dt.17.11.1997 for the assessment years 1994-95 and 1995-96 respectively, as without jurisdiction.

3. Heard Sri K.Raji Reddy, learned Special Standing Counsel for Commercial Taxes appearing for the petitioner-State and Sri B.Srinivas, learned counsel appearing for the respondent-assessee, in both the Revisions, and perused the record.

4. The facts of the case are that the assessing authority by considering the material available on record had initially granted set-

off of tax of Rs.5,57,587/- for the assessment year 1994-95 and Rs.5,51,874/- for the assessment years 1995-96, by passing assessment order dt.31.03.1997 and dt.29.03.1997, respectively. Subsequent to completion of assessment, on an objection raised by the Accountant General Office(Audit), the assessing authority sought to reassess the original assessment orders dated 29.03.1997 and 31.03.1997 for the assessment years 1994-95 and 1995-96 respectively, by invoking power conferred under Section 14(4) of the Act, restricted the benefit of set-off to Rs.5,45,063/- and Rs.4,83,453/- for the assessment years 1994-95 and 1995-96 respectively.

5. Aggrieved by the action of the assessing authority, the respondent-assessee had preferred appeals before the Appellate Deputy Commissioner. The Appellate Deputy Commissioner allowed the appeals filed by the respondent-assessee on the ground that the authority can invoke power under Section 14(4) of the Act only when fresh material *de hors* the assessment record comes to his notice which was not available at the time of passing order of assessment and thus the revision made on the basis of the material already available on record, would amount to change of opinion and is not permitted.

6. The Joint Commissioner by order dt.02.02.2011, had set-aside the order of the Appellate Deputy Commissioner and restored the reassessment order dt.17.11.1997 for the assessment years 1994-95

and 1995-96, in exercise of power under Section 20(2) of the Act on the ground that the order of the Appellate Deputy Commissioner is prejudicial to the interest of Revenue.

7. The respondent-assessee had preferred an appeal before the Tribunal against the order dt.02.02.2011 of the Joint Commissioner.

8. The Tribunal by taking note of the contentions urged and also the law laid down by the jurisdictional High Court in catena of cases as reported in ***State of Andhra Pradesh v. Ratna Sree Box Makers***[1] and ***Girdharlal and Company v. State of Andhra Pradesh***[2] held that the powers under Section 14(4) can be invoked only when fresh/new material *de hors* the record comes to light resulting in the escapement of tax but not due to non-application of mind or change of opinion, and the same cannot be resorted to reappraisal of material already on record. Therefore, exercise of revisional power by the Joint Commissioner was held, to be bad.

9. Petitioner-Revenue contends that, the Tribunal erred in holding that the audit objections raised by the Office of the Accountant General cannot be considered as material *de hors* the assessment record for the assessing authority to invoke the powers conferred under Section 14(4) of the Act for revising the original assessment order. It is further contended that the Joint Commissioner had rightly

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[1] 75 STC 82 (AP)

[2] 54 APSTJ 252

held the that set-off has been wrongly granted to the assessee and that there was no discrepancy or illegality in adopting the average price while calculating the set-off.

10. We have noted the respective contentions urged.

11. It is settled position of law that power of revision under Section 14(4) of the Act can be invoked only when the Assessing Authority comes in possession of the fresh/new material *de hors* the assessment record. The objection raised by the Audit Officer cannot constitute material *de hors* the assessment record, for the said authority to revise the assessment order already passed conferring benefit of set-off, as exercise of such power would amount to change of opinion.

12. The view taken in **Ratna Sree Box Makers**'s case (1 supra) and **Girdharlal and Company**'s case(2 supra) has been consistently followed by this Court in the decisions rendered in **Kanakadurga Manure Works v. State Of Andhra Pradesh**[3]. Further, while considering an analogous provision under the APVAT Act, 2005 in the case of **Banyan Enterprises, Hyderabad v. Commercial Tax Officer, Somajiguda Circle, Hyderabad & Another**[4], a similar view is taken.

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[3] 133 STC 147

[4] 54 APSTJ 122

13. Thus, the law being settled on the issue as to in what circumstances the power under Section 14(4) of the Act can be exercised and also what would amount to mere change of opinion, this Court is of the considered opinion that the view taken by the Sales Tax Appellate Tribunal does not suffer from any error giving raise to any question of law for the same to be considered by this Court.

14. Thus, both the Tax Revision Cases are without merit and are accordingly dismissed. No order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand closed in the light of this final order.

T. VINOD KUMAR, J

P.SREE SUDHA, J

02nd January, 2023

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