

## State Of Kerala vs C. Velukutty on 2 December, 1965

**Equivalent citations:** [1966]60ITR239(SC), [1966]17STC465(SC)

**Bench:** J.C. Shah, K. Subba Rao, S.M. Sikri

### JUDGMENT

Subba Rao J.

1. These two appeals by special leave are preferred against the order of the High Court of Kerala in Tax Revision Cases Nos. 52 and 53 of 1960 relating to sales tax assessments made on the respondent for the years 1955-56 and 1956-57 respectively.

2. The facts in the two appeals may be briefly and separately stated.

3. The following facts relate to Civil Appeal No. 986 of 1964 in respect of the assessment year 1955-56 : The respondent has two offices, the head office is at Court Road and the branch office, at Big Bazaar. Both the offices are in Kozhikode. The branch office does wholesale business and the head office does retail business and they maintain separate accounts. The goods sent from the branch office to the head office are entered in the accounts as transfers. The head office maintains accounts disclosing the goods so transferred by the branch office and also the goods purchased by it locally. The branch office has also transactions with other customers. On April 6, 1957, the Deputy Commercial Tax Officer, Kozhikode, assessed the respondent on the net turnover of his business of Rs. 9,30,565-10-5 for the assessment years 1955-56. But later on, on a surprise inspection of the head office by the Intelligence Officer, North Zone, Kozhikode, some books of accounts and records were recovered. On October 27, 1958, on the basis of the said books and records, the Sales Tax Officer issued a notice to the respondent proposing to determine to the best of his judgment the turnover which had escaped assessment. The respondent agreed to the Sales Tax Officer assessing the turnover of the head office on the basis of the aforesaid secret books recovered from the shop, but objected to a fresh assessment being made in respect of the branch office at Big Bazaar. That objection was rejected and the Sales Tax Officer reassessed the turnover of the business of the respondent in the following manner : He found that in regard to the head office the transactions disclosed in the secret books were 135% of the turnover recorded in the regular accounts and on that basis added 135% to the turnover disclosed in the regular books of the said office. He then applied the same percentage in regard to the assessment of the turnover of the branch office. He added 135% to the turnover found in the regular accounts of the branch office. He assessed the total turnover found in the regular accounts of the branch office. He assessed the total turnover of the two offices at Rs. 19,71,805-13-5. On the basis of the said total turnover the respondent was assessed to sales tax amounting to Rs. 16,269.37. The respondent preferred an appeal against the said order of the Sales Tax Officer to the Appellate Assistant Commissioner without any success. The further appeal preferred by him to the Sales Tax Appellate Tribunal was also dismissed. The said order was taken in revision to the High Court of Kerala in T.R.C. No. 52 of 1960.

4. The facts of Civil Appeal No. 987 of 1964 relating to the assessment for the year 1956-57 are as follows : On the basis of the secret accounts discovered in the surprise inspection of the head office, the Sales Tax Officer issued a notice to the respondent proposing to determine to the best of his judgment the turnover which had escaped assessment. The respondent had no objection for a reassessment being made in respect of the turnover of the head office on the basis of the secret accounts discovered, but objected to the reassessment of his branch office. The Sales Tax Officer applied the same principle in regard to the assessments of both the shops as he had adopted in the case of the turnover for the assessment year 1955-56. Taking the head office he found in regard to the general goods that the escaped assessment was 200% of the turnover assessed; and in regard to sugar, 500% of the assessed turnover. He, therefore, added 200% and 500% to the turnover of the general goods and the turnover of sugar respectively. In the same manner in regard to the turnover of the branch office, though no secret books were discovered in respect of that office he added to the turnover already assessed 200% of the turnover of the general goods and 500% of the turnover of sugar. With the result he fixed the total turnover of the two offices at Rs. 39,66,377-2-6 made up of the turnover of the head office at Rs. 2,21,251-14-5 and of the branch office at Rs. 37,45,125-4-1. The respondent pursued the matter up to the High Court. T.R.C. No. 53 of 1960 was the revision filed by him in the High Court.

5. The High Court set aside the orders of the Sales Tax Tribunal in respect of both the assessment years on the ground that the finding of the escaped assessment so far as the branch office was concerned amounted to an error of law, because it was based on conjecture. Rejecting the plea of the State that the matter should be remanded for a fresh assessment, the High Court dismissed the revisions. Hence the present appeals.

6. Mr. Govinda Menon, learned counsel for the State, argued that the High Court was wrong in holding that the best judgment assessment was capricious. He pressed on us to hold that the branch office must have maintained secret accounts corresponding to the secret accounts discovered in respect of the head office, that the respondent had suppressed the said accounts and that, therefore, the Sales Tax Officer acted reasonably in ascertaining the escaped assessment on the basis of the percentage of escaped assessment found in respect of the head office. He further contended that the High Court had no jurisdiction to interfere with the finding of fact arrived at by the Tribunal.

7. Mr. Sreedharan Nambiar, appearing for the respondent, contended that there was no basis for the Sales Tax Officer to hold that the respondent maintained separate accounts in respect of the branch office business, that there was absolutely no material before the Sales Tax Officer to sustain his best judgment assessment, and that, therefore, the said assessment made by the Sales Tax Officer was capricious and arbitrary and was rightly set aside by the High Court.

8. At the outset the relevant provisions of the Travancore-Cochin General Sales Tax Act, 1125 M.E. (XI of 1125), may be noticed :

"Section 12. - (1) Every dealer whose turnover is ten thousand Indian rupees or more in a year shall submit such return or returns relating to his turnover, in such manner, and within such periods as may be prescribed.

(2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment :

Provided that before taking action under this clause the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Section 15B. - Within sixty days from the date on which an order under section 15A, sub-section (4) or sub-section (6), was communicated to him, the assessee or the Deputy Commissioner may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law : ..."

9. It is manifest that the jurisdiction of the High Court under section 15B is confined only to the question whether the Tribunal has either decided erroneously or failed to decide any question of law. As we will point out immediately, the Sales Tax Officer acted capriciously and arbitrarily in assessing the respondent, which he could not do under section 12(2)(b) of the Act and the Tribunal confirmed that order. It is a clear case where the Tribunal decided erroneously on a question of law.

10. What is the scope of section 12(2)(b) of the Act ? The expression "to the best of his judgment" in the said clause is presumably borrowed from section 23(4) of the Income-tax Act. The said expression in the Income-tax Act was the subject of judicial scrutiny. The Privy Council in *Commissioner of Income-tax v. Laxminarayan Badridas* has considered those words. Therein it observed :

"He (the assessing authority) must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that sense, too, the assessment must be to some extent arbitrary."

11. The Privy Council, while recognizing that an assessment made by an officer to the best of his judgment involved some guess-work, emphasized that he must exercise his judgment after taking into consideration the relevant material. The view expressed by the Privy Council in the context of the Income-tax Act was followed when a similar question arose under the Sales Tax Act. A Division

Bench of the Calcutta High Court in Jagdish Prosad Pannalal v. Member, Board of Revenue, West Bengal, confirmed the assessment made by the sales tax authorities, as in making the best judgment assessment the said authorities considered all the available materials and applied their mind and tried their best to come to a correct conclusion. So too, a Division Bench of the Patna High Court in Doma Sahu Kishun Lal Sao v. State of Bihar refused to interfere with the best judgment assessment of a Sales Tax Officer as he took every relevant material into consideration, namely, the situation of the shop, the rush of the customers and the stock in the shop and also the estimate made by the Assistant Commissioners in the previous quarters.

12. Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub-section (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

13. Can it be said that in the instant case the impugned assessment satisfied the said tests? From the discovery of secret accounts in the head office, it does not necessarily follow that a corresponding set of secret accounts were maintained in the branch office, though it is probable that such accounts were maintained. But, as the accounts were secret, it is also not improbable that the branch office might not have kept parallel accounts, as duplication of false accounts would facilitate discovery of fraud and it would have been thought advisable to maintain only one set of false accounts in the head office. Be that as it may, the maintenance of secret accounts in the branch office cannot be assumed in the circumstances of the case. That apart, the maintenance of secret accounts in the branch office might lead to an inference that the accounts disclosed did not comprehend all the transactions of the branch office. But that does not establish or even probabalise the finding that 135% or 200% or 500% of the disclosed turnover was suppressed. That could have been ascertained from other materials. The branch office had dealings with other customers. Their names were disclosed in the accounts. The accounts of those customers or their statements could have afforded a basis for the best judgment assesment. There must also been other surrounding circumstances, such as those mentioned in the Privy Councils decision cited supra. But in this case there was no material before the assessing authority relevant to the assessment and the impugned assessments were arbitrarily made by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. It was only a capricious surmise unsupported by any relevant material. The High Court, therefore, rightly set aside the orders of the Tribunal.

14. Nor can we accede to the request of the learned counsel for the State to remand the matter to the Tribunal for fresh disposal. The sales tax authority had every opportunity to base its judgment on relevant material; but it did no do so. The department persisted all through the hierarchy of tribunals to sustain the impugned assessments. The High Court, having regard to the circumstances of the case, refused to give the department another opportunity. We do not think we are justified to

take a different view.

15. In the result, the appeals fail and are dismissed.

16. But, as regards costs, it is not a fit case for awarding costs to the respondent. It has been established that the respondent was keeping secret accounts and that he had not disclosed his entire dealings. Therefore, there will be no order as to costs.

17. Appeals dismissed.