Raghubar Mandal Harihar Mandal vs The State Of Bihar on 22 May, 1957

Equivalent citations: 1957 AIR 810, 1958 SCR 37, AIR 1957 SUPREME COURT 810

Author: S.K. Das

Bench: S.K. Das, Natwarlal H. Bhagwati, J.L. Kapur

PETITIONER:
RAGHUBAR MANDAL HARIHAR MANDAL

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
22/05/1957

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
BHAGWATI, NATWARLAL H.
KAPUR, J.L.

CITATION:
1957 AIR 810 1958 SCR 37

ACT:
Sales Tax-Assessee's accounts rejected as unreliable-Assessment made on guess without reference to evidence or materialValidity-Bihar Sales Tax Act, 1944 (Bihar Act VI of 1944),S.I0(2)(b)-Indian Income-tax Act, 1922 (XI Of 1922), S. 23(3).

HEADNOTE:
The appellant filed the necessary returns, as required by the provisions of the Bihar Sales Tax Act, 1944, and produced the account books. The Sales Tax Officer considered that the account books were not dependable and, after rejecting them as well as the returns, proceeded to estimate the gross turnover by adopting a figure by pure guess, without reference to any evidence or material, and

made the assessment under s. 10 (2) (b) of the Act.
Held, that under S. 10 (2) (b) of the Bihar Sales Tax Act, 1944, a duty is imposed on the assessing authority to make the assessment after hearing such evidence as the assessee may produce and such other evidence as the assessing authority may require on specified points, and, in case the returns of the assessee and his books of account are rejected, the assessing authority must make an estimate, but this must be based on such evidence or material as the assessing authority has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing authority thinks will assist him in arriving at a fair and proper estimate.
Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal, (1955) 1 S.C.R. 941 and Income-tax Commissioner v. Badridas Ramrai Shop, Akola, (1937) L.R. 64 I.A. 102, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 249 of 1954.

Appeal by special leave from the judgment and order dated January 8, 1952, of the Patna High Court in Misc. Judicial Cases Nos. 13, 14, 15, 16, 17, 18 and 19 -of 1949.

Bhawani Lal and K. L. Mehta, for the appellants. L.K. Jha, B. K. P. Sinha and R. C. Prasad, for the respondent.

1957. May 22. The Judgment of the Court was delivered by S.K. DAS J.-The appellant Messrs. Raghubar Mandal Harihar Mandal, hereinafter referred to as the assessee, is a firm of bullion dealers carrying on its business at Laheriasarai in the district of Darbhanga in the State of Bihar. The assessee was assessed to sales tax for seven quarters ending December 31, 1945, March, 31, 1946, June 30, 1946, September 30, 1946, December 31, 1946, March 31, 1947 and June 30, 1947, respectively. For three of the aforesaid quarters, namely those ending on December 31, 1945, March 31, 1947 and June 30, 1947, the assessee failed to file the necessary returns as required by the provisions of the Bihar Sales Tax Act, 1944 (hereinafter referred to as the Act), which was the Act in force during the material period; therefore, the assessee was assessed for those three quarters under sub-s. (4) of s. 10 of the Act. For the remaining four quarters, the assessee did file returns. The Sales Tax Officer rejected those returns as also the books of account filed by the assessee for all the seven quarters and assessed the assessee under el. (b) of sub-s. (2) of s. 10 of the Act. The Sales Tax Officer passed separate orders assessing the tax for all the seven quarters simultaneously on October 9, 1947. He assessed the tax on a taxable turnover of Rs. 2,94,000 for each of the five quarters ending December 31, 1945, March 31, 1946, September 30, 1946, December 31, 1946 and March 31, 1947; for the other two quarters ending on June 30, 1946, and June 30, 1947, he assessed the tax on a taxable turnover of Rs. 3,92,000. The assessee then moved in appeal the Commissioner of Commercial Taxes, Tirhut Division, but the Commissioner dismissed the appeals by his order dated

February 23, 1948. The Board of Revenue was then moved in revision but, by its order dated July 31, 1948, the Board refused to interfere. The Board expressed the view that the finding of the Sales Tax Officer and the Commissioner that the books of account maintained by the assessee were not dependable was a finding of fact which could not be interfered with in revision ; -therefore the assessing officer was bound to assess to' the best of his judgment. The Board was then moved under s. 21 of the Act to refer certain questions of law to the High Court of Patna which, the assessee contended, arose out of its order. By its order dated December 10, 1948, the Board rejected the applications for making a reference to the High Court on the same ground, namely, that no question of law was involved and the assessment orders were concluded by a concurrent finding of fact. The assessee then moved the High Court and by its order dated April 27, 1949, passed in Miscellaneous Judicial Cases Nos. 13 to 19 of of 1949, the High Court directed the Board of Revenue to state a case on the following question:

> " Whether the Sales Tax.Officer is entitled under section 10(2)(b) of the Act to make an assessment on any figures of gross turnover without giving any basis to justify the adoption of that figure ?"

The Board of Revenue then stated a case, and the High Court disposed of the reference by answering the question in the affirmative by its judgment and order dated January 8, 1952. The assessee then moved this Court and obtained special leave to appeal from the said judgment and order of the High Court.

The main contention of the assessee is that the High Court has not correctly answered the question of law referred to it. Before we proceed to consider this contention of the assessee, it is necessary to clear the ground by delimiting the precise scope of the question referred to the High Court. It is well settled that the jurisdiction of the High Court in the' matter of incometax references is an advisory jurisdiction and under the Income-tax Act the decision of the Tribunal on facts is final, unless it can be successfully assailed on the ground that there was no evidence for the conclusion on facts recorded by the Tribunal or the conclusion was such as no reasonable body of persons could have arrived at.It is also well settled that the duty of the High Court is to start with the statement of the case as the final statement of the facts and to answer the question of law with reference to that statement. The provisions of the Indian Income-tax Act are in pari materia with the provisions of the Act under our consideration, the main scheme of the relevant provisions of the two Acts being similar in nature, though the wording of the provisions is not exactly the same. Under s. 21 of the Act, the High Court exercises a similar advisory jurisdiction, and under sub-s. (3) of that section, the High Court may require the Board of Revenue to state a case and refer it to the High Court, when the High Court is satisfied that the refusal of the Board to make a reference to the High Court under sub-s. (2) is not justified. Under sub-s. (5) of s. 21 the High Court hears the reference and decides the question of law referred to it, giving in a judgment the grounds of its decision. In the case under our consideration, the question which was referred to the High Court related to the assessments made under s. 10(2)(b) of the Act; in other words, the question related to those four quarters only for which the assessments were made under s. 10(2)(b). The question did not relate to the three quarters for which the assessee had filed no returns and assessments were made under s. 10(4) of the Act. At one place in its judgment, the High Court referred to a slight inaccuracy in the question

framed, but it did not reframe the question so as to widen its scope and include the three quarters for which assessments were made under s. 10(4) of the Act. The question, as it stood and as it was answered by the High Court, did not relate to the propriety or legality of the assessments made under s. 10(4) of the Act. We must, therefore, make it clear at the very outset that the question relates to those four quarters only for which assessments were made under s. 10(2)(b) of the Act, and the answer given to the question will govern those four quarters only. Having thus indicated the precise scope of the question referred to the High Court, we proceed now to consider the main contention of the assessee. We must first read the relevant provisions of the statute under which the assessments were made. Sub-section (1) of s. 10 of the Act states that if the Commissioner is satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. Clause (a) of sub-s. (2) states what the Commissioner shall do, if he is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete; the clause states that in that event the Commissioner shall serve on the dealer a notice in the prescribed manner requiring him either to attend in person or to produce or cause to be produced any evidence on which such dealer may rely in support of his returns. Then comes cl. (b) of sub-s. (2) which must be quoted in extenso:

> " (b) On the day specified in the notice or as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points, shall assess the amount of tax due from the dealer."

These provisions are similar to the provisions contained in s. 23 of the Indian Income-tax Act. Sub-section (1) of s. 10 of the Act corresponds to sub-s. (1) of s. 23 of the Indian Income-tax Act; clause (a) of sub-s. (2) of s. 10 of the Act corresponds to sub-s. (2) of s. 23 of the Indian Income-tax Act; and clause (b) of sub-s. (2) of S. 10 of the Act corresponds to sub-s. (3) of s. 23 of the Indian Income- tax Act, though there are some verbal differences between the two provisions. Sub-section (3) of s. 23 of the Indian Income-tax Act requires the Income-tax Officer to assess the total income of the assessee and determine the sum payable by him on the basis of such assessment, by "an order in writing"; but cl. (b) of sub-s. (2) of s. 10 of the Act requires the Commissioner to assess the amount of tax due from the dealer and does not impose any liability as to "an order in writing." In spite of these differences, the two provisions are substantially the same and impose on the assessing authority a duty to assess the tax after hearing such evidence as the dealer may produce and such other evidence as the assessing authority may require on specified points.

The point for our consideration is-can the assessing authority, purporting to act under s. 10(2)(b) of the Act, assess the amount of tax due from a dealer more or less arbitrarily or without basing the assessment on any materials whatsoever ? In the question referred to the High Court, the expression used is, "make an assessment on any figure of gross turnover without giving any basis to justify the adoption of that figure". That expression is perhaps a little ambiguous, but read in the context of the statement of the case, the question can only mean this: can the assessing authority adopt a figure of gross turnover by pure guess and without referring to any materials on which the figure is based ? It

is clear to us that, understood in that sense, the High Court has answered the question incorrectly. The High Court went into an elaborate consideration, by way of comparison and contrast, of sub-s. (4) and el. (b) of sub-s. (2) of s. 10 of the Act. It is unnecessary for us to make any pronouncement in this appeal with regard to the precise scope of sub-s. (4) of s. 10 of the Act, which corresponds more or less to sub-s. (4) of s. 23 of the Indian Income-tax Act; nor is it necessary for us to decide if an assessment made under el. (b) of sub-s. (2) of s. 10 of the Act, when the account books of the assessee are disbelieved, stands exactly on the same footing as an assessment made under sub-s. (4) of s. 10 when the assessee has failed to furnish his returns. In some decisions relating to the corresponding provisions of the Indian Income-tax Act, it has been said that the difference between the two is one of degree only, the one being more summary than the other. These are questions which do not really fall for decision in the present appeal, which is confined to interpreting the true nature and scope of el. (b) of sub- s. (2) of s. 10 of the Act. With regard to the corresponding provision in sub-s. (3) of s. 23 of the Indian Income-tax Act, there is a decision of this Court which, in our opinion, answers the question before us. The decision is that of Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal(1). This Court observed:

> "As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-s. (3) of s. 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under s. 23(3)."

In our view, the aforesaid observations clearly show that the High Court was in error in answering the question in the affirmative. Firstly, the High Court treated the question referred to it as a pure question of fact; if that were so, then the High Court should have rejected the reference on the ground that it was not competent to answer a question of fact. Then, the High Court proceeded to consider certain decisions relating to the interpretation of sub-ss. (3) and (4) of s. 23 of the Indian Income-tax Act, and held that there was no difference between an assessment under sub-s. (3) and an assessment under sub-s. (4) of s. 23. The High Court applied the same analogy and on that footing held that there being no difference between an assessment under cl.

(b) of sub-s. (2) and an assessment under sub-s. (4) of s. 10 of the Act, the answer to the question must be in the affirmative. In our view, the approach of the High Court to the question referred to it was erroneous and the answer given to the question by it solely on the basis of sub-s. (4) of s. 10 of the Act was vitiated by that wrong approach. It was not sub-s. (4) of s. 10 of the Act which the High Court had to consider; it had to consider the true scope and effect of cl. (b) of sub-s. (2) of s. 10 of the Act. (1) [1955] 1 S.C.R. 941, 949.

Learned counsel for the respondent has strongly urged two points in support of the answer which the High Court gave. Firstly, he has contended that, on a proper reading of the assessment orders and the orders of the Commissioner, it would appear that the gross turnover for the quarters in

question was based on certain materials; therefore, the argument of learned counsel is that it is not correct to say that the figure of gross turnover was arbitrarily adopted or was adopted without reference to any evidence or any material at all. We have examined the assessment orders in question, which form part of the statement of the case. It is clear to us that what the Sales Tax Officer and the Commissioner did was to hold, for certain reasons, that the returns made by the assessee and the books of account filed by it were incorrect and undependable. It is not necessary to repeat those reasons, because we must accept the finding of fact arrived at by the assessing authorities that the returns and the books of account were not dependable. The assessing authorities rightly pointed out that several transactions were not entered in the books of account; and a surprise inspection made on July 15, 1947, disclosed certain transactions with a Bombay firm known as Messrs. Kishundas Lekhraj, which were not mentioned in the books of account; and finally, the assessee Was importing silver in the name of five confederates in order to suppress the details of the transactions etc. The assessing authorities further pointed out that there was a discrepancy between the return filed for the quarter ending June 30, 1946, and the accounts filed in support of it; the return showed a gross turnover of Rs. 2,28,370-12-0 while the accounts revealed a gross turnover of Rs. 1,48,204. All these we must accept as correct. Having rejected the returns and the books of account, the assessing authorities proceeded to estimate the gross turnover. In so estimating the gross turnover, they did not refer to any materials at all. On the contrary, they indulged in a pure guess and adopted a figure without reference to any evidence or any material at all. Let us take, for example, the assessment order for the quarter ending June 30, 1946.

The Sales Tax Officer said: "I reject the dealer's accounts and estimate a gross turnover of Rs. 4,00,000. 1 allow a deduction at 2% on the turnover and assess him on Rs. 3,92,000 to pay sales tax of Rs. 6,125." For the quarter ending on September 30, 1946, the Sales Tax Officer said: "I reject his irregular account and estimate a gross turnover of Rs. 3,00,000 for the quarter and assess him on Rs. 2,94,000 to pay tax of Rs. 4,593-12-0." These and similar orders do not show that the assessment was made with reference to any evidence or material; on the contrary, they show that having rejected the books of account, the assessing authorities indulged in -pure guess and made an assessment without reference-to any evidence or any material at all. This the assessing authorities were not entitled to do under cl. (b) of sub.s. (2) of s. 10 of the Act. Secondly, learned counsel for the respondent has referred us to several decisions on which the High Court relied and has argued that on the basis of those decisions, it must be held that the answer given by the High Court to the question referred to it was a correct answer. We propose to examine briefly some of those decisions, though, as we have stated earlier, the question is really answered by the observations made by this Court in Dhakeswari Cotton Mills' case (1). The first decision is the Privy Council decision in Income- tax Commissioner v. Badridas Ramrai Shop, Akola (2). Lord Russell of Killowen in delivering the judgment of their Lordships made the following observations as respects a "

> best of judgment " assessment within the meaning of s. 23 (4) of the Indian Income-tax Act:
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> " The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He 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, (1) [1955] S.C.R. 94I, 949.

(2) (1937) 64 I.A. 102, 114-115.

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. "

We find nothing in those observations which runs counter to the observations made in Dhakeswari Cotton Mills' case(1). No doubt it is true that when the returns and the books of account are rejected, the assessing officer must make an estimate, and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. To use the words of Lord Russell of Killowen again, " he must make what he honestly believes to be a fair estimate of the proper figure of assessment" and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate. In the case under our consideration, the assessing officer did not do so, and that is where the grievance of the assessee arises. The next decision is Ganga Ram Balmokand v. Commissioner of Income Tax, Punjab (2). It was held therein that where the income-tax authorities were not satisfied with the correctness or completeness of the assessees' accounts and, taking into consideration the state of affairs in general and the fact that the assessees had a large business and the profit shown by them was abnormally low in comparison with that of other persons carrying on the same business in the locality, calculated the taxable income by applying a flat rate of 7 per cent., the authorities were justified in applying such a flat rate, and the burden was on the assessees to displace the estimate. There again, the estimate made was not a pure guess and was based on some materials which the Income-tax Officer had before him. Din Mohammad J. who gave the leading judgment, observed: " It cannot be denied that there must be some material before the Income-tax Officer on which (1) [1955] 1 S.C.R. 941, 949.

(2) [1937] 5 I.T.R. 464.

to base his estimate, but no hard and fast rule can be laid down by the Court to define what sort of material is required on which his estimate can be founded." With that observation we generally agree. If, in this case, the Sales Tax authorities had based their estimate on some material before them, no objection could have been taken; but the question which was referred to the High, Court and which arose out of the orders of assessment was whether it was open to the said authorities to make an assessment on a figure of gross, turnover, without referring to any materials to justify the

adoption of that figure. In answering that question in the affirmative, the High Court has given a carte blanche to the Sales Tax authorities and has, in our opinion, misdirected itself as to the true scope and effect of cl. (b) of sub-s. (2) of s. 10 of the Act. The next decision is Gunda Subbayya v. Commissioner of Income-tax, Madras (1). This decision also does not help the respondent. It was held in that decision that though there is nothing in the Indian Income-tax Act which imposes a duty on an Incometax Officer, who makes an assessment under s. 23 (3), to disclose to the assessee the material on which he proposes to act, natural justice requires that he should draw the assessee's attention to it and give him an opportunity to show that the officer's information is wrong and he should also indicate in his order the material on which he has made his estimate. This decision is really against the respondent and does not lay down any rule which may be said to be inconsistent with the observations made by this Court in Dhakeswari Cotton Mills' case (2). The decision of the Lahore High Court in Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab (3) was specifically approved by this Court in Dhakeswari Cotton Mills' case (2). The rules laid down in that decision were these: (1) While proceeding under sub-s. (3) of s. 23 of the Income-tax Act, the Income-tax Officer is not bound to -rely on such evidence produced by the assessee as he considers to be false;

(2) if he proposes to make an estimate in disregard of (1) [1939] 7 I.T.R. 2 1.

(2) [1955] 1 S.C.R. 941, 949.

(3) [1944] 12 I.T.R. 393.

the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate; (3) he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and (4) in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible. The decision does not lay down that it is open to the Income-tax Officer to make an estimate on pure guess and without reference to any material or evidence before him.

The last decision to which we have been referred is the decision in Malik Damsaz Khan v. Commissioner of Income-tax (1). That again is a decision of the Privy Council. In that case, the validity of the assessment under s. 23 (3) of the Indian Income-tax Act was not challenged by the assessee and the appeal was directed solely to the amount of assessment. Their Lordships observed:

> 'But it appears to them that it was clearly competent for the Income-tax Officer in the circumstances of the present case to accept the return as a valid return and proceed to assessment under section 23 (1) or section 23 (3) as the case might be. Since he was not satisfied that the return was correct and complete he could not proceed under section 23 (1); he, therefore, as appeared upon the face of the assessment, proceeded under section 23 (3). Neither in the incompleteness of the return nor in

> the fact that in any accompanying statement the appellant referred to his return as an estimate can their Lordships find any possible justification for the plea that the assessment was incompetent or that the Appellate Assistant Commissioner had no jurisdiction to entertain the appeal proceedings which the appellant himself initiated. "

(1) [1947] 15 I.T.R. 445.

These observations do not help the respondent in any way; nor do they lay down any rule contrary to the rules laid down in Seth Gurmukh Singh's case (1).

For these reasons we hold that the High Court, was in error in answering the question referred to it. The appeal is accordingly allowed and the judgment and order of the High Court are set aside. The answer to the question referred to the High Court is in the negative. The appellant will be entitled to its costs both in this Court and in the High Court.

Appeal allowed.