**Decision Number:** 8206

**Decision Date:** 2066/05/29 (2009/09/14)

**Final Decision:** Supreme Court, Joint Bench

**Pre-Decisions:** Revenue Tribunal, Kathmandu's decision dated 2060/2/1 B.S.

**Petitioner:** Sita Trade Center Pvt. Ltd., Kalanki, represented by authorized Managing Director Sitaram Timalsina (Petitioner)

**Respondent:** 4 No. Area Tax Office, Kathmandu, currently Internal Revenue Office, Kathmandu (Respondent)

**Key Words:** Income Tax, Self-Assessment, Commission, Expense Deduction, Revenue Tribunal Act, Income Tax Act

## Key Points:

1. A taxpayer is entrusted with the responsibility of determining and submitting tax as per the law, based on the principle that the taxpayer has the most information about their business. When allowing self-assessment, transparency in income must be demonstrated.

2. If the details submitted by the taxpayer are proven false, i.e., if the taxpayer provides false details, evades tax, or determines less tax, they will be liable for punishment.

## Facts of the Case

\* The taxpayer, Sita Trade Center Pvt. Ltd., submitted a self-assessment return to the Tax Office, Kathmandu on 2055/11/3 B.S. (1999/01/17 A.D.) declaring a net income of approximately NPR 452,515.24 for the fiscal year 2054/055 B.S. (1997/04/14-1998/04/13 A.D.), along with an audit report.  
\* The tax office, deeming the submitted accounts unacceptable under Section 58(a) of the Income Tax Act, issued a letter on 2056/12/21 B.S. (2000/04/03 A.D.) providing a final opportunity to present arguments or evidence as to why net income should not be determined under Section 33(2) of the same act.  
\* Upon detailed examination of the self-assessment return, the Income Tax Assessment Order dated 2056/12/29 B.S. (2000/04/11 A.D.) determined the net income to be NPR 820,779.41 under Section 33(2) of the Income Tax Act, 2031, with a tax of NPR 205,194.85 and a penalty of NPR 6,858.15. After deducting the advance tax of NPR 108,861, the remaining tax and penalty were to be deposited within 35 days of receiving the order.

## Petitioner's Contention

\* The petitioner argued that the tax assessment order was arbitrary and based on showing higher business than the actual, without considering the complete details and necessary documents related to the business submitted to the respondent office. They requested the order be revoked.  
\* The petitioner claimed that the net income for the fiscal year 2054/055 B.S. (1997/04/14-1998/04/13 A.D.) was NPR 452,515.24, as certified by the auditor. The tax assessment and associated penalties imposed by the opposing 4 No. Area Tax Office, based on estimation and determining the net income as NPR 820,779.41, were contrary to Sections 33(2), 33(4) of the Income Tax Act, 2031, and Sections 3 and 54 of the Evidence Act, 2031. Therefore, they sought permission to appeal under Sections 8(b), 8(c), and 8(d) of the Revenue Tribunal Act, 2031, and requested the annulment of the Revenue Tribunal's decision.  
\* The petitioner's counsels argued that the company sells petroleum products and receives commissions from Nepal Oil Corporation. The company incurs daily expenses, which are approved by Section 12 of the Income Tax Act, 2031. Despite submitting details of income after deducting various administrative expenses and depreciation as per the law, the tax assessment was done arbitrarily by completely disapproving the expenses and accounts. The decision was made without disclosing a fair basis and reason as required by Section 33(2) of the Income Tax Act, 2031.

## Respondent's Contention

The Deputy Attorney, representing the respondent tax office, argued that the decision made by the tax office to determine the company's net income was in accordance with Section 33(a)(2) of the Income Tax Act, 2031.

## Legal Issues

1. Whether the decision of the Revenue Tribunal, Kathmandu is justified.

2. Whether the appeal claim of the appellant can be substantiated.

## Judgment

The Supreme Court upheld the decision of the Revenue Tribunal, Kathmandu, affirming the tax assessment order issued by the 4 No. Area Tax Office, Kathmandu. The court found that Sita Trade Center Pvt. Ltd. did not submit the income details of its petroleum business in time for the fiscal year 2054/055 B.S. (1997/04/14-1998/04/13 A.D.). Despite being given multiple notices, the company did not submit the necessary documents. The court reasoned that according to Section 33(2) of the Income Tax Act, 2031, if a taxpayer does not file an income return, files a false return, does not keep accounts of transactions, or if the kept accounts cannot be recognized, the tax officer can determine the net income based on the taxpayer's liability, assets, sources of income and expenditure, and details. The court concluded that the company filled the self-assessment form based on estimation without providing a transparent account of the actual details.

## Significance

The decision reinforces the principle of self-assessment in taxation, emphasizing the taxpayer's responsibility to provide accurate and transparent financial information. It also clarifies the authority of tax officers to determine net income in cases where taxpayers fail to comply with reporting requirements or provide unreliable information. The court also cited the Department of Internal Revenue's circular dated 2042/7/16 B.S. (1985/10/31 A.D.) regarding income determination for oil corporation dealers, allowing expense deductions of 50% on commission up to NPR 100,000, 40% on income from NPR 100,000 to NPR 200,000, and 30% on income exceeding NPR 200,000.  
Relevant legal provisions cited include Section 33(2) of the Income Tax Act, 2031.

## Source:

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