

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(APPEALS)

COMMERCIAL TAXES,ALAPPUZHA

PRESENT: S. PRASANNA

Date of order	:-	09.01.2020
Appeal no	:-	KVATA(ALPY)167/19
From the order of the	:-	State Tax Officer, Harippad
Year of assessment	:-	2015-16
Name of appellant	:-	S.Girish, M/s.Ramco Home Appliances, Ramco Plaza, Kacheri Junction, Harippad
Instituted on	:-	31.05.2019
Date of hearing	:-	11.12.2019
Present for appellant	:-	Sri.Jacob Joseph,Sales Tax Practitioner

APPELLATE ORDER AND GROUNDS OF DECISION

The appeal filed against the assessment order of State Tax Officer, Harippad, Order No.32041269595/2015-16 dated.31.05.2019. The assessing authority completed the assessment based on certain irregularities found on KVATIS scrutiny. The assessing authority estimated the detected suppressed turnover, added back to the assessment and levied tax plus interest. Aggrieved by the order, the dealer defend the case on the following grounds.

The assessment is completed is unjustified and capricious.

The assessing authority never found any evidence to prove that appellant earned gross profit than that have conceded by the appellant. Nor the assessing authority found any omitted transactions in the assessment records or books of accounts of the appellant. Therefore the assessment is not finding any valid suppression.

Hon'ble High Court of Kerala in the case of M/s.Classic Marbles Vs The State of Kerala on 28 May, 2008 (ST.Rev.335 of 2005) it was decided that 'One thing is clear that even in the case of best judgment assessment, the assessing authority is expected to assign valid reasons, firstly, for rejecting the books of accounts and the return filed by the assessee. Secondly, even the best judgment assessment is also an assessment and therefore, the assessing authority, on mere assumptions and presumptions, is not expected to make additions to the conceded turnover and also to the conceded gross profit in

the return filed. There must be valid reason for the assessing authority to reject the returns filed and to proceed for the best judgment assessment”.

It was further decided that “further, it is not the case of the assessing authority that though the assessee has earned more gross profit, he has not conceded the same or has not declared the same in the annual return filed for the assessment year in question. On mere ipse dixit the assessing authority proceeds to hold that in the line of business the assessee is carrying on, the gross profit must be on a higher side. This reasoning, in our opinion, is arbitrary but also capricious. Therefore, this reasoning of the assessing authority cannot be accepted”.

In the light of facts stated above the assessment completed be prayed to be set aside.

Sri.Jacob Joseph,Sales Tax Practitioner, appeared and heard the case and argued based on grounds of appeal.

I have gone through the records and found that the assessing authority completed the assessment u/s.25(1) of the KVAT Act without any basic reason in the assessment order itself. It is noted that no reliable material from the part of the learned assessing authority to make such assessment. Moreover he has not followed procedural formalities of best judgment assessment under Rule 38 of the KVAT Act. The officer has not observed the principles of natural justice in this case. So the assessment is null. It is better to verify the books of accounts and real fact of the case and pass orders with reference to result of verification. Hence the assessing authority is directed to re-do the assessment giving reasonable opportunity to produce the books of accounts. If the books of accounts are not acceptable, reasonable time may be given to file show cause and complete the assessment according to law. The appeal stands allowed. Order accordingly

Result: Modified

ASSISTANT COMMISSIONER (APPEALS)
ALAPPUZHA

To The Appellant through a/r

Copy submitted to Joint Commissioner(Law)

Copy submitted to Deputy Commissioner,CT,Alappuzha

Copy to State Tax Officer, Harippad/File

