

(1990) 02 CAL CK 0005

Calcutta High Court

Case No: IT Ref. No. 118 of 1985

S. K. SANDERSON (MINERALS)
LTD.

APPELLANT

Vs

COMMISSIONER OF INCOME
TAX.

RESPONDENT

Date of Decision: Feb. 9, 1990

Citation: (1992) 104 CTR 322 : (1992) 62 TAXMAN 536

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J; Bhagabati Parsad Banerjee, J

Bench: Full Bench

Judgement

@JUDGMENTTAG-ORDER

SUHAS CHANDRA SEN, J. :

The Tribunal has referred the following questions of law under s. 256(1) of the IT Act, 1961, to this Court :

"(1) Whether there was any material and/or evidence on which the Tribunal could legally justify that the addition made by the ITO of Rs. 2,00,000 is undisclosed income from business ?

(2) Whether in sustaining the said addition of Rs. 2,00,000 made by the ITO the Tribunal relied upon conjectures, suspicions and surmises and whether such finding of the Tribunal is otherwise unreasonable and perverse ?"

2. In this proceeding the assessment year involved is 1978-79 for which the relevant accounting period is the year ended on 31st December, 1977.

3. The facts as narrated by the Tribunal in Statement of Case are as under :

"The assessee is a company which manufactures lime out of limestones. Its factories are located at Satna, Maihar, Jukehi and Katni in the State of Madhya Pradesh. The

ITO at the time of assessment proceedings found that in the Schedule B (Notes forming part of the Accounts for the year ended on 31st December, 1977) in item No. 7 the following remarks had been given by the auditors :

The value of stocks and stores as shown as shown in these accounts are in accordance with the books maintained by the company, shortage and excesses in respect of the following items estimated on physical verification carried out at the year-end by volumetric measurement have not been adjusted in the company pending further investigations :

	Excess	Shortage
	Rs.	Rs.
Unshaked Lime	28,240.24	
Fireclay etc.	-	10,958.63
Limestone	20,586.30	-
Coal (included in stock of stores and spare parts Rs. 8,17,526)	1,45,531.13	
	1,94,357.67	10,958.63

The ITO examined the question of excess stock as noted by the auditors. The assessee explained that the discrepancy was attributed to volumetric measurement made by stacking coal and limestone on uneven surface which resulted in apparently excess quantity on conversion from volume to tonnage. On behalf of the assessee it was also explained that the same auditors in their report for the next year i.e. as on 31st December, 1978, did not press the point regarding the stock in question. But the ITO was of the opinion that the report for the subsequent year was concerned only with the said year and not with the earlier year ended on 31st December, 1977, during which the excess stock was specifically found out. The ITO rejected the submissions made before him and concluded that the assessee had been carrying on business outside the books of account and added Rs. 2 lakhs as undisclosed business income.

The assessee took up the matter before the CIT(A) and contended that the difference in the stock was duly considered by the directors in the report for the year ended on 31st December, 1977, and apprehension was expressed that the excess/shortage could be because of volumetric measurement and adjustment would be made after further investigation, if found necessary. The relevant part of

the report of the directors dt. 31st May, 1978 was given in the order of the CIT(A) in which it was stated that the stock and stores were inspected and physically verified by the officials of the company on the basis of the stock register maintained and that the difference was mainly due to the volumetric measurement which most likely involve human error and that, however, an adjustment would be made after further investigation. The CIT(A) also noted that subsequently the materials were placed on plain and even surface and were again subjected to volumetric measurement which was thereafter converted into tonnage and no discrepancy was found and that this fact was reported by the directors on 9th May, 1979, for the following year ended on 31st December, 1978.

It was also contended before the CIT(A) that the operation was properly explained to the auditors and that was why in the report for the subsequent year ended on 31st December, 1978, on adverse comments were the same persons and were by the auditors. It was also argued that the auditors were the same persons and were fully aware of the discrepancy of the stock as mentioned by the ITO and if the discrepancy had not been properly explained the auditors would have made appropriate observations on the subject.

The CIT(A) noted that the assessee's factories are situated in the hilly regions and it was understandable that the materials were stacked on an uneven surface. He also observed that the past background of the assessee could not be overlooked when it indicated that the books of accounts were never rejected and no business outside the books were detected in the past. Considering the circumstances as noted in the order of the CIT(A) the addition of Rs. 2 lakhs was deleted." The matter went up on further appeal before the Tribunal.

The Appellate Tribunal considered the rival submissions and other papers placed before it. The Appellate Tribunal observed that the ITO brought out the points and the material facts on record for making the addition relating to excess stock and that after the detention was made the assessee was stated to have erected an even platform for stacking of the stock. The Tribunal found that there was sufficient force in the arguments made on behalf of the Revenue that the stock available at the time when the auditors noted the excess could not have been the same stock on the same quantity of stock at the time of physical measurement which was made at a later date. The Tribunal found that there was no indication that when the stock was measured in an even platform, the auditors were associated and that there was no indication also as to how the volumetric measurement involved human error. The Appellate Tribunal took into account the categorical finding made by the auditors in the report as extracted and reproduced in the assessment order. The Appellate Tribunal considered that the directors report and other comments as produced in the order of the CIT(A) was not justified in deleting the above addition on the reasons recorded by him in his order. It was of the opinion that the addition was made on adequate materials and findings. Thus the amount deleted was restored

and the appeal by the Revenue was allowed."

4. The Tribunal had noted all aspects of the matter. The facts were argued at great length before the Tribunal both on behalf of the Revenue as also the assessee. In particular, the Tribunal took note of the fact that the auditors of the company M/s. Price Waterhouse & Co. had made physical verification of the stock and had reported that "the value of stocks and stores as shown in these accounts are in accordance with the books maintained by the company. Shortage and excess in respect of the following items intimated on physical verification carried out at the year-end by volumetric measurement have not been adjusted in the books of the company pending further investigation". Particulars of discrepancy in the stocks were given in detail by the auditors.

5. The case of the assessee is that in the subsequent year the auditors were satisfied about the stocks. The assessee company had already made an investigation and found that the statement of stocks was in order. This aspect of the matter was taken into consideration by the Tribunal. The assessee had carried investigation into the stock but according to the company investigation was not done in presence of the representatives of the auditors. In the auditors report in the subsequent year to which the learned counsel appearing for the assessee had invited out attention it has been recorded that the company had gone into and examined the stock afresh. The auditors did not state that they had examined the stock afresh and had come to the conclusion that the stock as found by them tallied with the stock recorded the books of the assessee.

6. The Tribunal is the final fact-finding authority. If the Tribunal, has taken all the facts into consideration, the Court will not disturb its decision even though the Court might have come to a different conclusion. The only thing that the Court has to see is that the Tribunal's decision was based on materials or had relied on irrelevant materials. But that is not the case here. The materials were all placed before the Tribunal both by the assessee as well as by the Revenue. The Tribunal had taken into consideration the materials on record before passing its order. The materials and the case made out by the assessee were examined by the Tribunal. Our attention was drawn to the decision of the Supreme Court in the case of [Commissioner of Income Tax, West Bengal II Vs. Durga Prasad More](#), . It was observed by the Supreme Court that "in a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the

reality of the recitals made in these documents".

7. In the case of [Commissioner of Income Tax \(Central\), Calcutta Vs. Daulat Ram Rawatmull](#), the Supreme Court reiterated the well-known principles of law relating to the jurisdiction of Reference Court vis-a-vis finding of fact made by the Tribunal. There the Supreme Court pointed out that "before dealing with the facts of this case we may advert to the principles which should govern the decisions of the Court in such like cases. Findings on questions of pure facts arrived by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they as reasonable men could come to the conclusion to which they have come; and this is so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. Further when a conclusion has been reached on an appreciation of a number of facts whether that is sound or not must be determined not by considering the weight to be attached to such single facts in isolation but by assessing the cumulative effect of all the facts in their setting as a whole".

8. In this case on a review of facts the Tribunal has come to the conclusion that the discrepancies found and reported by the auditors after verification of all stocks and stores could not be properly explained. This finding is based on materials. Whether the assessee has discharged its onus that lay on it to explain the discrepancies is also a question of fact. There is no doubt that the assessee gave an explanation. The Board of Director tried to deal with the comments made by the auditors. But whether the Board of Directors had satisfactorily explained the discrepancies or not is a matter that has to be adjudged by the Tribunal.

9. We are of the view that there were sufficient materials on the basis of which the Tribunal could come to the conclusion that the ITO was justified in making an addition of Rs. 2 lakhs as assessee's undisclosed income from the business. We are also of the view that the Tribunal had materials before it for coming to the conclusion that the addition of Rs. 2 lakhs by the ITO was justified.

10. In that view of the matter both the questions are answered in the affirmative and in favour of the Revenue. There will be no order as to costs.

BHAGABATI PRASAD BANERJEE, J. :

I agree.