APPELLATE CIVIL

Before P. C. Pandit and C. G. Suri, JJ.

HARYANA STATE, ETC.,—*Appellants*

versus

SAVITRI DEVI AND OTHERS,—*Respondents*

R.S.A. No. 669 of 1972.

December 4, 1973.

Punjab General Sales Tax Act (XLVI of 1948)—Section 19—Assessment orders made by Sales Tax authorities—Jurisdiction of Civil Courts to question such orders—Whether ousted—Surmises or inferences on the basis of relevant evidence—Whether can be drawn by the Assessing Authority.

Held, that a duty arises to pay the amount of tax demanded on the basis of the assessment made under Punjab General Sales Tax Act, 1948 and jurisdiction to question the assessment otherwise than by the use of the machinery expressly provided by the Act, is inconsistent with the statutory obligations to pay arising by virtue of the assessment. When a statute gives a finality to the orders of the special tribunal the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provisions, however, do not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It is not every straying away from the normal course or irregularity of procedure, however venial or inconsequential, which can be described as non-conformity with any fundamental principles so as to rob the special tribunal of its jurisdiction or to render its order as *non est*. Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. The Act makes ample provisions for remedies available to the party aggrieved and hence the jurisdiction of Civil Court is barred to question the assessment order made by the Sales Tax Authorities under the Act.

Held, that circumstancial evidence is nothing but a chain of inferences which can, having regard to the normal course of human conduct and natural sequences of cause and effect, be legitimately drawn from a proven state of affairs. Hence surmises or inferences can be legitimately drawn by the Assessing Authority on the basis of relevant evidence.

Regular Second Appeal from the decree of the Court of Shri S. N. Parkash, Senior Sub-Judge, with enhanced appellate powers, Hissar, dated the 9th day of June, 1971, affirming with costs that of Shri H. C. Gupta, Sub-Judge, II Class, Hissar, dated the 4th November, 1968, decreeing the suit of the plaintiffs and further ordering that the defendants Nos. 1 and 2 are restrained from recovering the tax amounting to Rs. 2,17,960 imposed upon the defendants firm No. 3 to 5 from the plaintiffs, and leaving the parties to bear their own costs.

C. D. Dewan, Additional Advocate-General, Haryana, with S. P. Jain, Advocate, *for the appellants.*

D. N. Awasthy, Advocate, *for the respondents.*

JUDGMENT

SURI, J.—Ten Sales Tax References Nos. 20 to 29 of 1971 came up before the First Division Bench on 19th February, 1973 and were directed to be heard with Regular Second Appeal No. 669 of 1972. That is how all these cases were put up before us and have been heard together. These can be conveniently disposed of by one judgment without prejudice to any of the parties concerned.

(2) A shop in Hissar in which commission agents' business in ghee was being carried on, was raided and inspected by the staff of the Sales Tax Department under the supervision of the Excise and Taxation Officer of the district on 29th June, 1966. Shri Budh Ram who was present on the premises could not explain a number of entries in the books of account lying inside the shop and these books were, therefore, taken into possession against a clear receipt delivered to Shri Budh Ram and he was directed to appear before the Assessing Authority on 1st July, 1966. He failed to appear on the said date and notices under section 11(6) of the Punjab General Sales Tax Act, 1948 (hereinafter briefly referred to as 'the State Act' to distinguish it from the Central General Sales Tax Act which would hereinafter be referred to as 'the Central Act') were, therefore, issued to him. Shri Budh Ram, represented by two Chartered Accountants, put in an application dated 4th July, 1966 on 5th July, 1966 before the Assessing Authority which was signed by him as the proprietor (*Malik*) of Messrs Budh Ram Desi Ghee Store. No reason was assigned in the application for his non-appearance on the 1st instant and a prayer was made that the account books should be inspected in his presence. Shri Budh Ram was directed to produce the pass-book of a current account relating to the ghee business and the books

of account for earlier years which had not been found inside the shop. In another application made a few days later, Shri Budh Ram described Shrimati Rukmani Devi, the widow of his maternal uncle, Girdhari Lal son of Raghunath Rai, to be the proprietor of Messrs Budh Ram Desi Ghee Store while he claimed that he had been carrying on his own business under the name and style of Messrs Bhim Raj Budh Ram. Some partnership deeds were produced but as no steps had been taken to get these firms registered under the Indian Partnership Act or the State or Central Sales Tax Acts, there is nothing to suggest that these deeds were not mere paper transactions or that these had been acted upon. Besides the two firm names mentioned above, there were references to another firm, named and styled "Messrs Girdhari Lal Raghunath Rai" not only on an engraved stone tablet outside the shop but also in a number of documents and books taken into possession from inside the shop. On the basis of Shri Budh Ram's interrogation and the entries in the books of account and other documents, the Assessing Authority issued notices on 17/18th August, 1966 for the appearance of certain other members of the two family branches of Rukmani Devi and Budh Ram who appeared to be associated in the ghee business being carried on in the shop. The said association of persons comprised of the three daughters of Rukmani Devi or their husbands and a son of one of these daughters who had been adopted by Shrimati Rukmani Devi. Shri Budh Ram's son and daughter-in-law who also appeared associated in this business were sent similar notices for personal appearance on 20th August, 1966 before the Assessing Authority. One of the sons-in-law of Shri Rukmani Devi appeared on the said date and was examined by the Assessing Authority. Many of the other persons to whom notices had been sent, put in appearance through counsel who promised that their clients would be produced in person on the next date. The case was accordingly adjourned to 23rd August, 1966 and then to 25th August, 1966 but the Presiding Officer happened to be on sick leave on both these dates. The assessee had filed an application which came up before the Presiding Officer on 27th August, 1966 and the case was adjourned to 29th August, 1966 when the assessee and the counsel for the members of the suspected association of persons were present. A prayer had been made in this application that the assessee may be given time to apply for settlement under section 10(2) of the State Act. The application was dismissed on the ground that it was belated and was an attempt to delay the proceedings as the last date for the return of the account books was drawing near. These persons had failed to appear in person but their counsel had filed affidavits in which all

connections with the above-mentioned Firms were denied and further time was prayed for production of evidence. Because of the failure of these members of the association to appear in person, assessment orders were passed against all of them on 30th August, 1966. These orders relate to assessment years 1962-63 to 1966-67. As the entries in the books and the statement made by Budh Ram disclose that inter-State transactions had also been going on during these years, best judgment assessments were made under the Central Act for some of these years for which account books had not been made available by the assessees. A total liability of about Rs. 2,18,000 has been imposed on this association of persons as sales tax and penalty due under the State Act and the Central Act. The assessees have been taking recourse to their remedies of appeals and references to the High Court under these Acts simultaneously with the filing of a writ petition in the High Court and a regular suit in the subordinate Civil Court at Hissar. Civil Writ No. 2056 of 1966 was filed in the High Court on 24th September, 1966 and the Motion Bench while admitting the petition had stayed recovery subject to the petitioners furnishing bank guarantee in respect of the amount in dispute. Even though it was brought to the notice of the Sub Judge at Hissar who tried the civil suit, that the writ petition was still pending and that the High Court had granted interim relief on certain conditions, the Sub Judge had granted an all-embracing relief on permanent basis without any reservations on the grounds, *inter alia*, that the assessment and demand raised by the Sales Tax authorities was without jurisdiction. The Senior Subordinate Judge on appeal had affirmed the judgment and decree of the Sub Judge after holding, *inter alia*, that there was not an iota of evidence that the plaintiffs were in any manner associated in the business in which the Sales Tax authorities had found a taxable turnover justifying the assessment and demand. The plaintiffs apparently found the civil suit to be a more convenient or pliable, if not the cheaper, remedy in spite of the nominal court fee paid on a plaint challenging the assessment and demand to an amount running into a few lakhs of rupees. it may further be observed that Budh Ram and Rukmani Devi had joined the plaintiffs in filing the writ petition contesting the assessment and demand in the High Court but they had only been shown as proprietors or representatives of the assessee Firms which were impleaded as defendants Nos. 3 to 5 in the civil suit. In the meantime in early August, 1966, Budh Ram and Rukmani Devi are said to have made transfers of their immovable property in favour of their relatives under circumstances which strongly suggest that this was an attempt to save the property from being seized in satisfaction

of the demand for arrears of Sales Tax and penalty. The inclusion by the Sales Tax authorities of the family members, who were the transferees of the property without any consideration, in the association of persons which has been treated as the dealers or the assessees of the ghee business would defeat the very purpose of this device.

(3) The regular second appeal had been filed against the judgments and decrees of the subordinate civil Courts and raised the question, which often arises, as to how far an Act creating a special tribunal can oust the jurisdiction of civil Courts by an express provision or impliedly by providing the party aggrieved with remedies which can generally be sought in a civil suit. There are a number of rulings of the various High Courts in India on the subject and two decisions of different Full Benches of the Lahore High Court in *Municipal Committee, Montgomery* v. *Master Sant Singh* (1) and *Lachhman Singh* v. *Natha Singh and others* (2) have been cited before us. The matter has, however, been under the consideration of the highest Courts in the land including the Judicial Committee of the Privy Council, the Federal Court of India and the Supreme Court in a number of later rulings and I would be confining my discussion to the dicta of these highest courts. The genesis of the idea which has grown and developed over the last few decades was furnished by the Privy Council decision in *Secretary of State* v. *Mask & Co.* (3). Lord Thankerton who wrote the judgment for the Judicial Committee had observed, amongst other things, that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction was so excluded, the Civil Courts has jurisdiction to examine into cases where the provisions of the Act had not been complied with or the special tribunal had not acted in conformity with the fundamental principles of judicial procedure. Mask & Co., who were the plaintiffs in the suit filed in the Court of a Sub Judge, were contesting their liability to pay duty levied by the Customs authorities on a consignment of betel-nuts imported from outside British India. Powers to levy duty had been invoked under the Land Customs Act read with certain provisions of the Sea Customs Act. These Acts made provision for the filing of an appeal and then a revision petition, though only to the executive authorities. There was no express provision barring the jurisdiction of the civil Courts through finality

(1) A.I.R. 1940 Lah. 377 (F.B.)
(2) A.I.R. 1940 Lah. 401 (F.B.)
(3) A.I.R. 1940 P.C. 105=67 I.A. 222.

was sought to be attached to the orders passed by the executive authorities. There was no express provision in the Act giving the party a right to seek any remedy in the civil Courts or barring such a right. The special Acts were found to contain provisions which were a complete and self-contained code in regard to obligations which were created by the special statute and it enabled the appeal to be carried to the supreme head of the executive Government. Their Lordships of the Judicial Committee of the Privy Council found it difficult to conceive what further challenge to the order of the executive authorities was intended to be excluded other than a challenge by way of a civil suit. Even though the High Court had on an appeal set aside the judgment and decrees of the trial Court holding that these provisions created an implied bar to the jurisdiction of the civil Courts, their Lordships of the Privy Council set aside the judgment of the High Court and restored that of the Sub Judge. The remarks that the exclusion of the jurisdiction of civil courts is not to be readily inferred, cannot, therefore, be taken to mean that such exclusion is to be seldom or rarely implied.

(4) The next Privy Council ruling which has been the subject-matter of discussion in a large number of later rulings of the Supreme Court of India was in the case of *Raleigh Investment Co. Ltd.* v. *The Governor-General in Council* (4). This was a case under the (Indian) Income Tax Act, 1922. Section 67 of that Act created an express bar to the filing of any civil suit to set aside or modify an assessment made under this Act. Even though the *vires* of the taxing provision (section 45) of the Act had been challenged, it was observed that a duty arose to pay the amount of tax demanded on the basis of the assessment made under the Act and jurisdiction to question the assessment otherwise than by the use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligations to pay arising by virtue of the assessment. The only doubt in their Lordships' mind was whether an express provision was at all necessary in order to exclude the jurisdiction of the civil Court to set aside or modify the assessment. Here again a special Bench of the High Court of Calcutta in its ordinary original jurisdiction had held section 67 of the Income Tax Act and section 226 of the Government of India Act, 1935 to be *ultra vires* and had decreed the suit but the Federal Court had upset the decision of the High Court and the decision of the Federal Court had been maintained on appeal by the Judicial Committee of the Privy Council.

(4) A.I.R. 1947 P.C. 78=74 I.A. 50.

(5) The dicta of the Privy Council in the two rulings mentioned above were cited with approval and followed in a number of later judgments of the Supreme Court of India until some doubts had been expressed about their correctness in the case of *Firm of Illuri Subbayya Chetty and Sons* v. *State of Andhra Pradesh* (5). Reference to these doubts was then made towards the end of paragraph 12 on page 174 of the Supreme Court judgment in *Custodian, Evacuee Property, Punjab and others* v. *Jafran Begum* (6). A Bench of five judges of the Supreme Court including Hidayatullah, C.J., who wrote the judgment for the Bench in *Dhulabai etc.* v. *State of Madhya Pradesh and another* (7) then commented on how the opinion of the Court had been wavering with regard to the correctness of the ratio of the two Privy Council rulings mentioned earlier (see the end of paragraph 9 on page 81). The entire case law was, however, discussed in this ruling and the correctness of the dicta of the Privy Council in the cases of *Mask & Co.* (3) and the *Raleigh Investment Co.* (4) was reaffirmed. The following final conclusions were stated in a nut shell in paragraph 32 of the judgment on pages 89 and 90 as follows:—

(1) "Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and

(5) A.I.R. 1964 S.C. 322.
(6) A.I.R. 1968 S.C. 169.
(7) A.I.R. 1969 S.C. 78.

further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as *ultra vires* cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of *certiorari* may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

(6) Shri Dewan, the learned Additional Advocate-General, for the State of Haryana then wanted to make distinction between the provisions of a statute which give finality to the orders of a special tribunal and cases where an express bar to the jurisdiction of the civil Court had been created. He argued that conclusion No. 1 above would apply in cases of finality having been attached to the orders of the special tribunal while conclusion No. 2 would apply only in those cases where an express bar to such jurisdiction had been created. I am afraid that I could not properly appreciate the distinction that Shri Dewan sought to make because the crucial test in

all cases, to my mind, would be whether the special Act creating the statutory tribunal had or had not made adequate or sufficient provision for remedies to a party aggrieved by the special liability created by the statute. My point can be clarified by reference to the Supreme Court ruling in the case of *State of Kerala* v. *M/s. Ramaswami Iyer and Sons* (8). In this case, at the time of the impugned assessment, there was no provision in the special Act creating an express bar to the filing of the suit or lending finality to the orders of the special tribunals. An implied bar was read between the lines of the special Act simply because of the adequacy or sufficiency of the remedies provided in the scheme of the Act. In the case of *Raleigh Investment Co.* (4) (*supra*), Lord Uthwatt, who had written the judgment for the Privy Council, had doubts in his mind whether an express provision was at all necessary in order to exclude the jurisdiction of a civil Court where an assessment under the Income Tax Act was sought to be set aside or modified.

(7) On the ratio of the rulings discussed above, the judgments and decrees of the civil Courts below cannot be maintained. These Courts may appear to have been so perfunctory in coming to a decision that they had not even cared to look up the provisions of the two Sales Tax Acts or to examine the material on which the impugned assessment orders dated 30th August, 1966 were based even though certified copies of those orders had been placed on record and exhibit marked as D3 to D7. The trial Judge has wrongly mentioned section 9 instead of section 19 as the relevant provision at four different places during his discussion of issue No. 1 relating to the ouster of the jurisdiction of the civil Courts. The correct section has not been mentioned anywhere during this discussion which may seem to show that this was not a mere clerical error due to oversight. The lower appellate Court in its eagerness to use a pet expression has said that there was not even an iota of evidence to prove that the plaintiffs were associated with the ghee business under assessment. He has chosen to ignore the existence of facts, circumstances and evidence which were very much there and which had a direct bearing on the question of the eligibility of the tax due from these plaintiffs. It was held by the Privy Council in *Raleigh Investment Company's case* (4) (*supra*) that the duty to determine the liability to pay a tax under the Act was that of the special Tribunal and that the jurisdiction of the civil Court in the matter was barred. *In Mask &*

(8) A.I.R. 1966 S.C. 1738=XVIII S.T.C. 1 (S.C.)

Company's case (3) (*supra*), the ouster of the civil Court's jurisdiction was impliedly read into the Act simply because the party aggrieved had remedies available to him even though to the executive authorities only. That ruling was given during the times when the party aggrived had no right to file any writ petition in the High Court or the Supreme Court as no provisions corresponding to Articles 32, 226 and 227 of the Constitution of India existed on the statute book. It is not the case of Shri Awasthy, the learned counsel for the assessees, including the plaintiffs, that the State or the Central Acts do not make provision for sufficient or adequate remedies to the party aggrieved by the orders of the special tribunals. Section 11 of the State Act prescribes a detailed procedure as to how an assessment has to be made. The assessee had ample opportunity of producing evidence and of being heard. Sections 20 and 21 then make provision for filing of appeals and revisions. Section 22 then gives the right to the assessee to have a question of law referred to the High Court and in case the Sales Tax authorities decline to make a reference, he can apply to the High Court for a mandate which has actually been granted to the assessees including the plaintiffs on their application under section 22(2) of the State Act. These sections which make ample provision for remedies available to the party aggrieved would create an implied bar to the jurisdiction of the civil Courts even if section 19 had not been there in the State Act.

(8) Shri Awasthy has not been able to cite any direct authority in support of his argument that what is assessed to a tax under the Act is a transaction or dealing and not the person or the dealer. The Single Bench decision of this Court in *Union of India* v. *Shri Moti Ram Mehra* (9) and the Division Bench ruling in *Khazan Singh and another* v. *Dalip Singh and another* (10) cited by Shri Awasthy have no bearing on the facts of the present case. Shri Awasthy's argument, if accepted, could lead to some very queer results. Let us imagine the case of an Income-Tax or Sales-Tax Inspector raiding a shop with its front doors locked and carrying the sign-board on its facade of "Messrs Bogus Slyman and Associates, Commission Agents". Any such firm carrying on forward dealings would have no stocks-in-trade on the premises as no physical or ready delivery is effected in such transactions. There could be a secret back door from which the dealer could enter the premises and transact the

(9) C.R. No. 708 of 1972 decided on 7th February, 1973.
(10) 1969 Rev. L.R. 599.

business mainly on telephone. There may be a letter-box slit opening in the wall or door for receiving the daily mail. The account books may be found on the shop and may enable the Taxation authorities to determine the taxable turnover and to make the assessment of tax due. It cannot be said that, placed in a similar situation, the Taxation authorities cannot take steps to trace the identity of the person carrying on the business with the idea of the realisation of the tax due. The leasehold rights of the premises, the telephone connection and the account books would hardly be sufficient for the satisfaction of the dues if sold in the open market; even if it could be said that these assets were legally transferable. Shri Awasthy's argument would imply that the Taxation authorities would be helpless in such a contingency from effecting any recovery of the arrears of tax and penalty etc. The questions as to who is the dealer and what is its constitution and who are the persons interested or associated in the business whether as partners or otherwise, are matters which have to be gone into for completing the assessment of tax and the realisation of the demands that may be raised in the proceedings. Even if the determination of the Constitution of the association of persons is described to be a fact collateral to the assessment inquiry, the matter would have to be determined by the inferior tribunal even according to certain portions of the Supreme Court ruling in M/s. *Kamala Mills Ltd.* v. *State of Bombay* (11) which has been cited by Shri Awasthy. It is obvious from this ruling that the question of the nature of the transaction has also to be decided by the inferior or the special tribunal. The question as to who is a 'dealer' as defined in clause (d) of section 2 and all other matters which arise during the inquiry under section 6 of the State Act are to be decided by the Sales Tax authorities according to the Supreme Court decision in *The State of Kerala* v. *N. Ramaswami Iyer and Sons* (8). An assessment cannot possibly be made without determining as to who is the person or the party to the dealing who is to be assessed for the eligibility of the tax. Shri Dewan has further cited, in this connection, two rulings of Division Benches of Madras and Mysore High Courts in *State of Madras* v. *Sri Ramakrishna Mills (Coimbatore) Limited* (12) and *K. Burman* v. *The Commercial Tax Officer, Calcutta and others* (13) respectively. There are then a number of rulings of the Supreme Court which show that the constitution of a group described as association of persons has to be

(11) A.I.R. 1965 S.C. 1942.
(12) (1969) 24 S.T.C. 274.
(13) (1971) 28 S.T.C. 637.

determined by the special tribunal. *Commissioner of Income-tax, Poona* v. *Buldana District Main Cloth Importers Group* (14), *Mohammed Noorulla* v. *Commissioner of Income-tax, Madras* (15) and *Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad* v. *Smt. Indira Balkrishna* (16) have been cited in this connection. The findings of fact of the special tribunal with regard to the said association of persons or its constitution cannot be challenged or interferred with in a Civil Court.

(9) The Senior Sub Judge, Hissar, while dismissing the appeal filed by the State, had remarked that there was not an iota of evidence that the plaintiffs were associated with the ghee business which was being carried on at Hissar. In his opinion, the findings of the Assessing Authority were based only on entries in the books of account as if these entries were no evidence at all. He has not cared to see as to what was the nature of those entries or how far these were genuine as representing transactions that had actually taken place. He had referred to the fact that the assessee had produced some partnership deeds. He has, however, ignored the fact that, according to the recitals in the documents, one of the plaintiffs had been a partner in this ghee business at Hissar until Shrimati Rukmani Devi had replaced him. If he had read the copies of the assessment orders, he would have found that one of the plaintiffs had opened a current account with a bank at Hissar and that the pivotal figure, Shri Budh Ram, who had provided the inter-link between the two family branches, had been authorized to operate that Bank account. Entries with regard to dealings of the Firms carrying on this ghee business with parties inside and outside the State had been posted in this Bank account. The pivotal figure Budh Ram had also made a statement before the Assessing Authority which connected the plaintiffs with the ghee business at Hissar. The statements and conduct of the assessees including the plaintiffs during the assessment proceedings had been completely ignored by the subordinate civil Courts. The common business premises at Hissar with no partitioning or demarcation of any separate portions, the common stock-in-trade without any separate earmarking of the tins of ghee, the common till (cash or *ghalla*), so many *aliases* to the Firm name, the omission to get the Firm registered and licensed, the duplication

(14) A.I.R. 1961 S.C. 1261=42 I.T.R. 172.

(15) A.I.R. 1961 S.C. 1043=42 I.T.R. 115.

(16) A.I.R. 1960 S.C. 1172=39 I.T.R. 546.

of books, the withholding of some of them and intermixing of entries in these books of the various Firm names, the purchase of a test machine in the name of one Firm and the crediting of the testing fees to another Firm in these books, the current account opened by one of the plaintiffs living at a place in another State with the Bank at Hissar and the authority to operate this account given to the person who was locally controlling or managing the whole business either as proprietor or General Attorney, the conflicting statements made by him from time to time, the personal ledger accounts of all the plaintiffs in these books showing sustained dealings and sharing of profits, the wayward conduct or contrariness of the plaintiffs, and the veiled or secret language in the books which had to be decoded and deciphered by the Sales Tax Authority without any assistance from the persons to whom these accounts related—were all devastating evidence which could not be ignored by any civil Court unless it had already made up its mind to take a particular view in the case. In any case, it cannot be said that the concurrent findings of fact of the Assessing Authority, the Appellate Commissioner or the Sales Tax Tribunal were not based on any relevant evidence. It is not every straying away from the normal course or irregularity of procedure, however venial or inconsequential, which can be described as a non-conformity with any fundamental principles so as to rob the special tribunal of its jurisdiction or to render its orders as *non est.* Even if the Assessing Authority could be described to have been hard on the plaintiffs in denying further opportunity for appearance or production of evidence, the Act had provided remedy for the removal of that grievance by going up in appeal or revision against the correctness of the impugned order. In fact, the orders of the Tribunal or the Appellate Commissioners do not show that any grouse had been made on any such score during the hearing of the appeals before them. Some grounds could have been taken up in the memos of appeal but not pressed at the hearing. The Sales Tax authorities may appear to have remained well within the ambit of their jurisdiction while passing the orders that had been challenged by the plaintiff in the civil suit and the jurisdiction of the civil Courts was obviously barred. Regular Second Appeal No. 669 of 1972 filed by the State, therefore, deserves to succeed and the suit filed by the plaintiff-respondents is dismissed.

(10) This brings me to the Sales Tax references made on a mandate issued by the High Court on the assessees' application under section 22(2) of the State Act and the corresponding provisions in

the Central Act. The following questions had been formulated by the assessee in his application under section 22(1):—

(a) Whether in the circumstances and facts of the case, the sale of all the three firms:

(1) M/s. Budh Ram Desi Ghee Store,

(2) M/s. Bhim Raj Budh Ram, and

(3) M/s. Raghunath Rai Girdhari Lal,

could not be clubbed and subjected to levy of tax;

(b) Whether in the facts and circumstances and by virtue of only some debits and credits in the name of the relations of the applicants all could be declared members of the "Association of persons" and sales tax liabilities be raised again against them, without affording them proper opportunity to rebut the same; and

(c) Whether without any material against the applicants, the tax and the penalty imposed in each case could be levied under section 6 of the Act on the inference drawn from the books in the subsequent years.

The High Court modified these questions as follows while directing the Tribunal to state the case:—

(i) Whether in the circumstances and facts of the case, the sale of all the three firms:

(1) M/s. Budh Ram Desi Ghee Store,

(2) M/s. Bhim Raj Budh Ram, and

(3) M/s. Raghunath Rai Girdhari Lal,

could be clubbed together and subjected to levy of tax;

(ii) Whether on the facts and in the circumstances of the case the Sales Tax Authorities were right in law in making the assessments on the "Association of persons" fixed by them, and

(iii) Whether without any material on the record tax and penalty imposed in each case could be levied under

section 11(6) of the Act on surmises and inferences drawn from accounts relating to different years.

Since these have been described as questions of law, I have only to see whether the concurrent findings of fact of the Assessing Authority, the Deputy Excise and Taxation Commissioner (Appeals) and the Sales Tax Tribunal are based on relevant evidence or whether these findings are in any way perverse or foolish. I have already given above in a nutshell the facts, circumstances or evidence on which these findings of the Sales Tax authorities are based. Even if the onus of proving any particular matter was on the Department, this onus has, to my mind, been amply discharged by evidence which is not only relevant but which is overwhelming. The findings are not based merely on circumstantial evidence because the statement made by Budh Ram before the Assessing Authority is direct evidence with regard to a number of controvercial matters in spite of the fact that he has been shifting his position from time to time. The rules of evidence, onus of proof and how it can be discharged in taxation cases are based on the same fundamental principles that prevail in other judicial or quasi-judicial proceedings and the inferences or presumptions that can be drawn from the wayward or contrary conduct of a party or an assessee would not be different in one case than in the other. Onus of proof is not such a bogey that it can be charmed away only by the chanting of a set magical incantation or *mantra*. Legitimate inferences, legal presumption or the circumstances of a case may go on so imperceptibly undermining the onus or lightening the burden of proof that the cumulative effect may be found to have suddenly tilted the balance against the party who had by his false denial and conduct put his rival on proof of a matter in controversy. Circumstantial evidence is nothing but a chain of inferences which can, having regard to the normal course of human conduct and natural sequences of cause and effect, be legitimately drawn from a proven state of affairs. Nor is it necessary that the Court's judgment in taxation cases should be couched in the departmental jargon of the Field Inspectors and other officials of the Taxation Department. My minority view in the case of *Atul Glass Industries, Faridabad* v. *The State of Haryana and others* (17) is characterised by a ring of diffidence, placed as I was in the company of seniors, but my approach to such cases of best judgment assessments stands fully

(17) (1971) 28 S.T.C. 148.

vindicated by the following forthright observations of the Hon'ble Judges of the Supreme Court in *The Commissioner of Sales Tax, Madhya Pradesh* v. *M/s H. M. Esufali, H. M. Abdulali, Siyaganj, Main Road, Indore* (18) :—

"(i) The assessments made on the basis of assessee's accounts and those made on 'best-judgment' basis are totally different types of assessment. * * * But when the assessing officer comes to the conclusion that no reliance can be placed on the accounts maintained by the assessee, he proceeds to assess the assessee on the basis of his 'best judgment'. In doing so, he may take such assistance as the assessee's accounts may afford, he may also rely on other information gathered by him as well as on the surrounding circumstances of the case.

(ii) The High Court was wrong in assuming that the assessing authority must have material before it to prove the exact turnover suppressed. If that is true, there is no qutstion of 'best judgment' assessment. The assessee cannot be permitted to take advantage of his own illegal acts. It was his duty to place all facts truthfully before the assessing authority. If he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove conclusively what turn over, he had suppressed. That fact must be within his personal knowledge. Hence the burden of proving that fact is on him. The task of the assessing authority in finding out the escaped turnover was by no means easy. In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the 'best judgment' assessment no doubt should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a *bona fide* estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. *Prima facie*, the assessing authority is the best judge of the situation. It is his 'best judgment' and not of any one else's. * * * *

(18) (1973) 2 S.C.C. 137.

(iii) The Sales Tax Officer had material before him to find out, how much turnover had escaped assessment during a period of 19 days. On the basis of that material he estimated the escaped turnover for the entire year. Hence it cannot be said that there was no basis for the estimate made by the S.T.O. It may be that his estimate was an over-estimate or an under-estimate but it cannot be said that the estimate was without any basis. In making that estimate, there was an element of guess-work which was inevitable in the circumstances of the case. If the S.T.O. was compelled to adopt a rule of thumb which in a sense is an arbitrary rule, assessee was entirely responsible for bringing about that situation."

(11) I have every reason to agree, even if I had any option to do otherwise, with these observations of the Hon'ble Judges.

(12) The evidence about the banding together of the plaintiffs with other members of their families as co-adventurers with the object of sharing the spoils within the ratio of the Supreme Court ruling in *Mohammed Noorulla, representing the Estate of Late Khan Sahib Mohd. Oomer Sahib* v. *Commissioner of Income-tax, Madras* (15) is very much there and it was not necessary that the band should have carried all the hallmarks of a regular partnership. Members could join or withdraw from the band or association of persons without any formalities generally observed by partners as may appear from another Supreme Court ruling in *G. Murugesan & Brothers* v. *Commissioner of Income-Tax, Madras* (19). The other rulings that have been relied upon by Shri Dewan in this connection are *Commissioner of Income-tax, Bombay, North Kutch and Saurashtra, Ahmedabad* v. *Smt. Indira Balkrishna* (16) and *Commissioner of Income-tax, Poona* v. *Buldana District Main Cloth Importers Group* (14). This Court could, no doubt, look into the question of relevancy or admissibility of the evidence, but it cannot go into the question of its adequacy or sufficiency in order to verify the correctness of the findings of fact of the Taxation authorities. While the analysis of the evidence with the idea of seeing whether it satisfies the first test could be described as a question of law, the physical weighment of this evidence with the idea of seeing whether or not it tilts the balance in favour of one or the other

(19) 88 I.T.R. 432.

party would be a question of fact. This Court has further to see whether the hand holding the balance is not trying dishonestly to tilt the balance in favour of one party and against the other. No such allegations have been made against the Taxation authorities.

(13) For reasons given above, question No. (i) above as framed by the High Court is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

(14) Question No. (ii) is similarly answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

(15) The answer to question No. (iii) is that the surmises or inferences had been legitimately drawn by the Department on the basis of relevant evidence and in view of the non-co-operative attitude of the assessees including the plaintiffs, and that the tax and penalty imposed in each case for all the assessment years was justified. It cannot be said that these assessments had been made without any material on record. The quantum of penalty to be imposed is a matter within the sole discretion of the Assessing Authority and no reference can be called by the High Court in order to determine whether the amount of penalty imposed is excessive or not, as was observed by a Division Bench of this Court in *National Motors* v. *The Punjab State* (20).

(16) For reasons given above, the Regular Second Appeal No. 669 of 1972 is accepted and judgments and decrees of the civil Courts below are set aside. The suit filed by some members of the association of persons who have been assessed to tax and penalty, is dismissed. All the three questions referred to this Court are answered in favour of the Revenue and against the assessee. Parties are left to bear their own costs throughout.

PANDIT, J.—I agree with the order proposed by my learned brother.

K.S.K.

(20) (1971) 28 S.T.C. 442.