

**IN THE HIGH COURT OF DELHI AT NEW DELHI
19.05.2009**

TANEJA MINES P.LTD

Present:

Mr. Rakesh K. Khanna, Sr. Advocate with Mr. Rajesh Mahna and Ms Shaija Sinha, Advocates for the Petitioner.

Mr. H.L. Taneja, Advocate for the Respondent.

STC 1/2008 and CM No. 2161/2008

STC 2/2008 and CM No. 2162/2008

The facts in the present case are that a survey was conducted by the Department on 09.03.2000 and 10.03.2000 as well as on 24.10.2000. Predicated on the sales of 9th and 10th March, 2000 the turnover for the assessment years 1999-2000 and 2000-01 was computed. Mr. Khanna, the learned Senior Advocate appearing for the petitioner submits that the notice which was received by the petitioner related to only three months, but calculations have been carried out for the complete year. Furthermore he submits that there is a difference of approximately Rs 15,000/- in the sales on the days on which survey was conducted.

He relies on the decisions in State of Karela vs. C. Velukutty (1966) 60 ITR 239 (SC) and State of Orissa vs. Maharaja Shri B.P. Singh Deo. (1970) 76 (SC) ITR 690. The Tribunal has noted the assessee's contention that in respect of those two dates the figure of sales included Rs 15,000/-, Rs 1000/- and Rs 1500/- stated to have been received in cash by the petitioner firm, on account of transaction other than sale of goods.

The case put forward before us is that a sum of Rs 15,000/- had been received from one of the employees as a refund of an advance and other sums were received back from CPWD. *This very contention has been examined and rejected by the Tribunal, in our opinion, rightly so, on the ground that the statement of Sh. Arun Kumar Gupta, the proprietor, recorded on 09.03.2004 and 10.03.2004 did not refer to this aspect of the matter. The assessee's case has, therefore, been discounted and for good reasons.* The Hon'ble Supreme Court in Commissioner of Sales Tax vs. H.M. Esufali (1973) 2 SCC 137 has noted that if there is any material collected by the Assessing Officer pertaining to the exact turnover that would be sufficient reason to make a best judgment assessment, and that, there is an element of guess work involved in making a best judgment assessment. In the present case the best judgment

assessment is predicated on the sales noted on two dates, i.e., 9th and 10th March, 2000. It is well-established that the sales of a particular business entity is essentially a matter of fact unless perversity has been shown, which on a reading of the order of the Tribunal, we are unable to locate. No question of law arises for consideration.

We find no reason to call for a reference.

VIKRAMAJIT SEN, J.
RAJIV SHAKDHER, J.

MAY 19, 2009