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PRESUMPTIONS IN BEST JUDGEMENT ASSESSMENT ORDERS IS NOT AN ARBITRARY POWER

SECTION 62 (1) OF THE CGST ACT, 2017

'Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates'.

COMMENTS

A fundamental comprehension of above Section obviously makes it perceivable that the best judgment assessment to be passed by any authority shall be based on taking into account of all the relevant material, which is available or which may be gathered by such assessing authority.

In this connection, the following case laws can be taken into consideration:-

- 1) *State of Orissa v. B.P. Singh Deo* (1970) 76 ITR 690 -AIR SC 670 (SC).
In this case, the Hon'ble Supreme Court held that the power to levy assessment on the best of judgment basis is not an arbitrary power, but such assessment must be based on best judgment or on relevant material. **It is not a power that can be exercised on the sweet will and pleasure of the concerned authorities.**
- 2) *State of A.P. v. Ravuri Narasimulu* (1965) 116 STC 341 (APHC).
The Legislature has confined the power of the department under this sub-section to assessing such turnover as is shown to have escaped assessment and has not extended it to estimate depending upon inferences to be drawn by the department from certain circumstances. It does not clothe the department with power to make a best judgment assessment.
- 3) *The Privy Council in the case of Commissioner of Income Tax, Central and United Provinces v. Laxmanarain Badridas* (1937) 5 ITR 170, 180 observed that the Assessing Authority **must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter.**
- 4) *Honorable STAT in the case of M/s. Sri Krishna Timber Depot, Jammalamadugu v. State of A.P.* (14 APSTJ 238), wherein it was held that 'A presumption without basis, on mere suspicion cannot be sustained. Suspicion can only lead to investigation and unearthing material on which any conclusion can be based, but on mere suspicion without further investigation no inference can be drawn and no conclusion can be arrived at'.

To sum up, the principles governing a best judgment assessment are:

- 1) A best judgment assessment is not a wild assessment. Exclusion of arbitrariness and caprice is an obligation implicit in the power to assess to the best of judgment.
- 2) Assessment to the best of judgment must be founded upon some rational basis, relevant material and logic so that nexus between such basis or material and the figure of assessment arrived at can be objectively seen though some amount of guess work or estimation is to be allowed like a play in the joint.

Though, the above case laws are pertaining to Sales Tax/Income Tax Acts, but the principles and concepts regarding the best judgment assessment formulated by the earlier judicial pronouncements **would be squarely applicable to the GST disputes also.**

PRESUMPTIONS FOR THE BEST JUDGEMENT ASSESSMENT ORDER??

Any presumption shall always linked to some sort of material like bills, vouchers or payment consideration evidence, etc. If the estimation is not based on any evidences, such factual presumptions are always rebuttable. That means, without any incriminating material to establish the assumed suppressions of taxable supply of services (say), best judgment orders cannot be upheld as de jure.

It is further reasonable here to note that the main principle emanates from the decisions on the best judgment assessment is that any levy basing on mere presumptions, but not substantiated by any sort of incriminating material to establish the suppression indubitably, **shall be seen as bad in law and in violation to the principles of natural justice.**

Any best judgment assessment must **be supplemented by reason**, because reason is the heart beat of any conclusion and fetches clarity in conclusion of any order, as such, without the reason best judgment orders becomes lifeless and amounts to denial of fundamental justice. The reason/evidence would act as live link between the mind of assessing authority and the resultant conclusion arrived at.

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