

(1970) 03 AHC CK 0031
In the Allahabad High Court
Case No : S.T.R. No. 617 of 1967

Amrish Chandra Surendra Kumar

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 20-03-1970

Acts Referred:

Citation : (1971) 27 STC 566

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : V. Sarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

R.L. Gulati, J.—These are two references submitted by the Additional Judge (Revisions) Sales Tax, Agra, one arising out of proceedings under the U.P. Sales Tax Act and the other arising out of proceedings under the Central Sales Tax Act in respect of the same assessee, namely, M/s. Amrish Chandra Surendra Kumar of Agra.

2. In respect of the assessment year 1957-58 two ex parte assessment orders were passed against the assessee, one under the U.P. Sales Tax Act and the other under the Central Sales Tax Act, because of the failure of the assessee to be present on the date of the hearing. The Sales Tax Officer rejected the account books of the assessee and made a best judgment assessment fixing the turnover at Rs. 3,60,000 under the U.P. Act and Rs. 30,000 under the Central Act. The assessee in due course filed appeals against the assessment orders which were dismissed as time-barred. The assessee had also moved an application u/s 30 for setting aside the ex parte order, but the same was rejected. The assessee thereafter filed an appeal and then went up in revision against the order rejecting its application u/s 30. The assessee also asked for a reference on this aspect, but the Judge (Revisions) has declined to make a reference. We are, therefore, not concerned with that aspect of the matter.

3. After the dismissal of the assessee's appeals against the ex parte assessment orders, two revision applications were filed u/s 10 of the Act. The Judge (Revisions) partly allowed those revisions. He condoned the delay in filing the appeals, set aside the appellate order dismissing the appeals as time-barred and reduced the taxable turnover to Rs. 2,10,000 under the U.P. Act and to Rs. 20,000 under the Central Act.

4. At the instance of the assessee the revising authority has submitted the following questions of law for our opinion:

(1) In a case in which assessee's appeal has been dismissed on the point of limitation only, without entering into merits of acceptance or rejection of accounts or of quantum and the assessee files a revision against that order praying only for condonation of delay and remand of the case for hearing of the appeal on merits, whether it is proper and legal for the revising authority after condoning the delay, to decide the questions of acceptance or rejection of accounts and quantum, without allowing the assessee an opportunity of having his case on these points heard by the appellate authority and decided ?

(2) Whether on the facts and circumstances of the case assessment made by the Additional Judge (Revisions) Sales Tax, was not arbitrary ?

5. Question No. (1) relates to the jurisdiction and propriety of the orders passed by the Judge (Revisions) disposing of the revision application of the assessee on merits. From a perusal of the revisional order it does not appear that any such objection was raised by the assessee as is contemplated by question No. (1). In fact the Judge (Revisions) in the statement of the case has observed:

The assessee or his learned counsel appears to have argued on the merits, and I appear to have delivered judgment on merits without considering this aspect of the matter.

6. It appears that at the time of the hearing of the application u/s 11(1), it was contended on behalf of the assessee that after the Judge (Revisions) had condoned the delay, the appeals should have been remanded to the appellate authority for decision on the merits and the Judge (Revisions) should not have gone into the merits. We are of opinion that the assessee was not entitled to raise any such question because no such question was raised or argued at the time when the revision applications were heard. The question of law which this court can be called upon to answer must be a question arising out of the revisional order.

7. In any case the jurisdiction of the revising authority u/s 10 of the Act is plenary and is couched in very wide terms. The revising authority can call for and examine either on its own motion or on the application of the Commissioner or the person aggrieved, the records of the case and pass such orders as it thinks fit. In a revision application in which the order of the appellate authority dismissing the appeal as time-barred is challenged, it is open to the revising

authority to set aside the appellate order and to remand the case for decision on merits or to decide the case on the merits itself when the revising authority is satisfied that either the appeals were not time-barred or that the delay was condonable. There is nothing illegal in the revising authority adopting either course.

8. It is true that normally in such a case the revising authority should remand the appeal to the appellate authority for decision on merits. But in the present case when the assessee itself invited the revising authority to go into the merits of the case, it cannot be said that the Judge (Revisions) acted illegally or improperly in acceding to the request of the assessee and disposing of the case on the merits. The assessee itself having invited the revising authority to go into the merits of the case cannot turn round and question the jurisdiction or propriety of the order passed by the Judge (Revisions) when it finds that the decision of the revising authority is not to its liking.

9. Question No. (1) is couched in an abstract form and is thus not a proper question. It is well settled that a question of law upon which the revising authority can invite the opinion of this court must be a question which is related to the facts of a particular case. No abstract question of law can be referred. In the circumstances we reframe the question to read as under:

"Whether on the facts and circumstances of the case the order passed by the Judge (Revisions) on the revision application of the assessee disposing of the case on the merits was a legal and proper order ?"

and we answer this question by saying that on the facts and circumstances of this particular case, the order was both legal and proper.

10. As regards question No. (2), it cannot be said that the revisional order is arbitrary. The quantum of turnover has been fixed with reference to the past record of the assessee which disclosed that in the immediately preceding year the assessee had been assessed at a net turnover of Rs. 2,83,396-10-3 while in the year preceding the previous year the assessment was made at a gross turnover of Rs. 3,04,813-15-3. Having regard to the past record of the assessee, the Judge (Revisions) considered the estimate made by the Sales Tax Officer to be excessive and accordingly reduced it to Rs. 2,10,000 for the purpose of tax under the U.P. Sales Tax Act and from Rs. 30,000 to Rs. 20,000 for the purpose of the Central Sales Tax Act. It is well settled that in the best judgment assessment the past record is a relevant material. The best material was in the possession of the assessee in the shape of the books of account which were neither produced before the Sales Tax Officer nor before the Judge (Revisions). In the circumstances the only course left open for the Judge (Revisions) was to have assessed the turnover with reference to the past records of, the assessee. On taking into consideration the past records of the assessee, the Judge (Revisions) allowed some relief to the assessee. In the circumstances, it cannot be said that the Judge (Revisions) acted arbitrarily or fixed the quantum of

turnover without any material.

11. In the circumstances, we answer the second question by saying that the assessment made by the Judge (Revisions) Sales Tax was not arbitrary.

12. The Commissioner of Sales Tax is entitled to one set of costs which we assess at Rs. 100. The counsel's fee is also assessed at the same figure.