(1985) 04 AHC CK 0049

In the Allahabad High Court

Case No : S.T.R. No. 2 of 1985

Ashok Traders APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(8)

Citation : (1986) 61 STC 204

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision has been preferred by the assessee against the judgment dated 22nd August, 1984, passed by the Sales Tax Tribunal, Faizabad, relating to the assessment year 1978-79.

2. The assessee was carrying on the business of grain and oil-seed in the relevant assessment year. Its books of account were rejected by the assessing authority and best judgment assessment was passed. In the first appeal filed by the assessee the rejection of books of account was maintained but the turnover was reduced. The revenue as well as the assessee being aggrieved filed appeals before the Tribunal and both the appeals were dismissed by the impugned order.

3. The learned counsel for the assessee contended that the grounds on which the books of account have been rejected were not valid and relevant grounds on which the books of account could be rejected. He has contended that the Tribunal has mainly rejected the books of account on the basis of survey dated 23rd December, 1978. It has been alleged that at the time of the aforesaid survey the shop of the assessee was closed. The case of the department was that since the assessee intentionally closed the shop at the time of survey, the books of

account could be rejected. The counsel for the assessee also contended that the penalty proceedings for the aforesaid action was also initiated by the assessing authority and the penalty imposed was ultimately knocked of. In view of the aforesaid fact this can also not be a valid ground for rejecting the books of account.

4. Learned standing counsel contended that this fact in isolation that the shop was closed at the time of survey may not be a sufficient ground for rejection of books of account but the cumulative effect of all the grounds mentioned in the appellate order of the Tribunal may be enough to warrant the rejection of books of account. After hearing counsel for the parties I am of the opinion that the contention raised by the learned standing counsel does not appear to be correct. The Tribunal has mainly rejected the books of account on the ground that the shop was closed at the time of survey dated 23rd December, 1978, and at that time on enquiry it was found that there was arrival of wheat one day earlier and two trucks of grains were sold during the night time. It has nowhere been mentioned in either of the orders of the authorities below that what was the source of information and who gave that information. The source of information remained shrouded in mystery. The assessee was never told who was the person who gave information and in the absence of any material to that effect, the books of account could not be rejected on mere guess-work until and unless the department disclosed the source of information or particulars about the enquiry. That having not been done by the department I am of the opinion that the books of account of the assessee were wrongly rejected and they are liable to be accepted.

5. Since the books of account have been held to be acceptable, the turnover has to be fixed by the Tribunal again treating the books of account as acceptable.

6. In the result the revision succeeds and is allowed. The order passed by the Tribunal is quashed and it is directed to fix the turnover of the assessee treating the books of account as acceptable. However, there will be no order as to costs.

7. Let a copy of this order be sent to the Tribunal concerned as contemplated u/s 11(8) of the U.P. Sales Tax Act.