(1977) 08 AHC CK 0062

In the Allahabad High Court

Case No : C.M.W. No. 8153 of 1974

BHAN HUKUM CHAND APPELLANT

Vs

SALES TAX OFFICER and Others RESPONDENT

Date of Decision : 26-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 7 CTR 16

Hon'ble Judges : D. M. Chandrashekhar, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D. M. Chandrashekhar, C.J. - This petition under Article 226 of the Constitution, is directed against the order of the Additional Judge (Revisions) Sales Tax, Meerut Range in Revisions Nos. 2049 and 2050 of 1973.

2. The petitioner was carrying on business of manufacturing and selling bricks. For the assessment years 1966-67 and 1967-68 the Assessing Authority under the Sales Tax Act rejected his books of accounts and made best judgment assessment. The petitioner appealed against those assessment orders and ultimately preferred revision petitions to the Additional Judge (Revisions).

3. The Additional Judge (Revisions) upheld the petitioners books of accounts by the Assessing Authority and the appellate authority for those two assessment years and also the best judgment assessments for those two years, but reduced the turnovers estimated for those two years. Correspondingly the amounts of tax assessed for those two years were also reduced.

4. In this petition Sri. V. K. Burman, learned counsel for the petitioner did not challenge the rejection of the petitioners books of accounts by the authorities. However, his grievance was that the petitioners turnovers estimated even by the Additional Judge (Revisions) were arbitrary and capricious and based on no material and were also excessive.

5. As pointed out by the Privy Council in Commissioner of Income of Income Tax vs. Badridas Ramrai Shop when the Officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information, he must not act dishonestly, vindictively or capriciously, because he must exercise judgment in the matter; he must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local knowledge and repute in regard to assessees circumstances and his own knowledge of previous returns by, and assessments of the assessee and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guesswork in the matter, it must be honest guesswork.

6. In the present case the assessing authority, while estimating the turnovers of the petitioner, took into account the capacity of his kiln. He ascertained the number of grounds a brick kiln in that locality would be operated generally for five ground per season. But the Additional Judge (Revisions) proceeded on the assumption that the petitioner has used his brick kiln for four grounds only per season during those two assessment years. Thus the Additional Judge (Revisions) based his estimates on the best available material. Hence such estimates cannot be said to be arbitrary or capricious though there must necessarily be some guesswork as to the number of grounds the petitioner might have used his brick kiln in each years. That he did not adopt five grounds per season as the basis for estimating the petitioners turnovers but was content to take the number of grounds as four per year, shows that he did act vindictively.

7. But, Shri Burman submitted that in the earlier years the assessing authorities had found that the assessing authorities had found that the petitioner had used his brick kiln only 2 1/2 grounds per season and hence the Judge (Revisions) should have adopted the same number of grounds as the basis for estimating the petitioners turnovers for the years 1966-67 and 1967-68 also. Though the petitioners operations in the earlier years were relevant, there is no presumption that in the assessment years in question the number of grounds of operation of the petitioners brick kiln remained the same as in the earlier years and that there was no increase in the number of such grounds to four.

8. We see no grounds to interfere with the order of the Additional Judge (Revisions) In the result, we dismiss this petition. But, in the circumstances of the case we direct the parties to bear their own costs.