(1983) 01 AHC CK 0047

In the Allahabad High Court

Case No : Sales Tax Revision No. 379 of 1982

Bijai Kumar Shanker Singh APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 10-01-1983

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

Citation : (1983) 53 STC 86

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Sapru, J.—The assessee is a brick kiln owner. The assessee''s account books were rejected and the disclosed turnover was enhanced by the Sales Tax Officer. The assessee appealed to the Assistant Commissioner (Judicial) who confirmed the rejection of the account books by the Sales Tax Officer but reduced the turnover determined by the Sales Tax Officer. On further appeal, the Tribunal upheld the rejection of the account books but reduced the turnover.

2. Aggrieved, the assessee has filed the present revision.

3. The learned counsel for the assessee submits that there was no ground on which the assessee''s turnover could be rejected. He submits that the fact that the account books were not available at the brick kiln at the time of survey, is no ground for rejection of the account books.

4. The non-production of the account books at the time of survey is not necessarily a ground for the rejection of the account books which are otherwise found to be in order.

5. One of the grounds given for rejection of the account books was that the assessee had maintained no rokar and khata. The Tribunal has not rejected the

account books on the ground of non-maintenance of the account books by the assessee. The circumstance that the assessee did not maintain rokar and khata again cannot lead to the rejection of the assessee''s account books which could be verified otherwise. There is no finding of the Tribunal or the Assistant . Commissioner (Judicial) that the purchases and sales were not verifiable.

6. The last ground for rejecting the account books was that the assessee had deliberately under-estimated the capacity at 3,50,000 bricks whereas it was 4,50,000 bricks as found by the Survey Officer who visited the kiln on 10th October, 1977. The Tribunal held that the capacity was under-estimated with a view to suppress the sales.

7. No actual suppression of sales has been found. In the circumstance a presumption cannot be raised that the assessee deliberately under-estimated the capacity of his kiln.

8. The Tribunal, while rejecting the account books of the assessee, held that the account books could not be implicitly relied upon. It has not clearly rejected the account books. In the circumstances, the revision has to be allowed.

9. In the result, the revision is allowed, the account books of the assessee shall be accepted and the assessee to be taxed accordingly. The papers will go back to the Tribunal u/s 11(8) of the Sales Tax Act to make appropriate orders. There will be no order as to costs.