
(2007) 09 AHC CK 0208
In the Allahabad High Court

Bobys" Restaurant

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 17 VST 286

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated January 14, 2004 for the assessment year 1998-99.

2. The applicant was running a restaurant for the supply of foodstuff, ice cream, cold drinks and other eatables and claimed to have maintained books of account in respect of the purchases and sales and disclosed the taxable turnover at Rs. 23,55,309.44. The assessing authority after rejecting the books of account by way of best judgment assessment estimated the taxable turnover at Rs. 28,40,000. The turnover estimated by the assessing authority has been confirmed in first appeal and by the Tribunal.

Heard Sri K. Saksena, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel. With the consent of the parties, the present revision is being disposed of at this stage.

3. Learned Counsel for the applicant submitted that in this nature of business, maintenance of manufacturing account is not possible. He further submitted that the necessary details relating to the purchases and sales have been maintained which were furnished before the assessing authority. Therefore the rejection of the books of account is not justified. He submitted that none of the authorities has given any reason for estimating the taxable turnover. He submitted that in the previous years and subsequent year the turnover has been accepted which

has not been considered while estimating the turnover. Therefore, the order of the Tribunal is not justified.

4. Learned Standing Counsel submitted that the maintenance of manufacturing account u/s 12(2) of the Act has been held mandatory and in the absence of the manufacturing account the books of account are liable to be rejected and the turnover has to be estimated by way of best judgment assessment as held by the apex court in the case of Commissioner of Sales Tax v. Girja Shanker Awanish Kumar reported in [1997] 104 STC 130 : [1997] UFTC 213.

5. Heard learned Counsel for the parties and I have perused the order of the Tribunal and authorities below.

6. Admittedly the applicant has not maintained the manufacturing account as required u/s 12(2) of the Act. The Tribunal has also observed that the necessary details relating to the purchases have also not been furnished. The maintenance of manufacturing account u/s 12(2) of the Act has been held mandatory by the apex court in the case of Commissioner of Sales Tax v. Girja Shanker Aivanish Kumar [1997] 104 STC 130 : [1997] UPTC 213 in which it has been held that non-maintenance of manufacturing account is not a technical irregularity and non-maintenance of the manufacturing account leads to the rejection of books of account and the turnover has to be estimated by way of best judgment assessment. In this view of the matter, I do not find any error in the order of the Tribunal rejecting the books of account.

After rejecting the books of account the turnover has to be estimated by way of best judgment assessment. The best judgment assessment should be based on some material and should have a rational nexus with the material. Some reasons should be given for the estimate of the turnover. In the present case, none of the authorities has given any reason for estimating the taxable turnover at Rs. 28,40,000. Even the turnover of the previous years has also not been considered. In this view of the matter, the order of the Tribunal is vitiated so far as it relates to the estimate of turnover.

7. In the result, revision is allowed in part. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeal afresh and estimate the turnover afresh. The Tribunal while estimating the turnover should consider the material on record, the previous years assessment and give cogent reasons for estimating the turnover.