**(2016) 11 AHC CK 0126**

**In the Allahabad High Court**

**Case No :** Trade Tax Revision No. 373 of 2016

Commissioner, Commercial Tax — APPELLANT

Vs

Indus Vally Promoters — RESPONDENT

**Date of Decision :** 11-11-2016

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 7
Uttar Pradesh Trade Tax Rules, 1948 — Rule 44-B

**Citation :** (2017) 95 UPTC 17

**Hon'ble Judges :** Surya Prakash Kesarwani, J.

**Bench :** Single Bench

**Advocate :** Sri B.K. Pandey, Standing Counsel, for the Applicant; Sri Suyash Agarwal, Advocate, for the Opposite Party

**Final Decision :** Dismissed

## Judgement

Surya Prakash Kesarwani, J.—Heard Sri B.K. Pandey, learned Standing Counsel for appellant and Sri Suyash Agarwal, learned counsel for the respondent.

2. With the consent of learned counsel for the parties, this revision has been finally heard.

3. Briefly stated the facts of the present case are that the assessment of the assessee was completed for the assessment year 2007-08 (w.e.f. 01.04.2007 to 31.12.2007) by assessment order dated 06.03.2013. The assessee is engaged in the business of construction and sale of flats and buildings. The assessing authority assessed the assessee on the value of transfer of property in goods involved in execution of works contract under Section 3-F of the U.P. Trade Tax Act. The purchases shown by the assessee from unregistered dealers were enhanced and accordingly tax was levied by the assessing authority. However, the assessing authority did not record any finding in terms of the provisions of Rule 44-B of the U.P. Trade Tax Rules, 1948 to the effect as to how the amount actually incurred by the assessee towards labour charges and other services and

profit relating to supply of labour and services and salepurchase of goods involved in execution of works contract are not ascertainable. The assessee maintained books of accounts as per financial year. It was because of enactment of U.P. VAT Act, 2008 effective from 01.01.2008 that the assessment of assessee was completed by the assessing authority for the period covered by the U.P. Trade Tax Act i.e. from 01.04.2007 to 31.12.2007. The Assessing Officer has not recorded any finding as to how the things are not ascertainable as provided in Rule 44-B of the Rules. The findings recorded by the assessing authority has no basis. That apart, undisputedly, the assessee has maintained regular books of accounts in the ordinary course of business. He filed audited balance sheet during the course of assessment proceeding. No infirmity could be pointed out by the assessing authority either in the books of accounts or in the disclosed result of business. The first appeal filed by the assessee was dismissed by the appellate authority without recording any cogent reason on the issue involved in the present revision. In the Second Appeal No. 34 of 2016 filed by the assessee, the tribunal considered the controversy and found no basis for addition in purchases of the assessee disclosed from unregistered dealers. Consequently, the tribunal held that the assessee is liable to tax on the undisclosed purchases shown by it.

4. I find no infirmity in the impugned order of the tribunal. The addition on account of purchase from unregistered dealers by the assessing officer was not based on any evidence or material on record.

5. Under the circumstances, the tribunal has not committed any error of law in setting aside the addition. No question of law arises in this revision. Revision lacks merit and therefore, deserves to be dismissed.

6. In view of the aforesaid, the revision is dismissed.