(1976) 03 AHC CK 0053

In the Allahabad High Court

Case No : S.T.R. No. 218 of 1971

COMMISSIONER OF SALES TAX — APPELLANT

Vs

M/S. SHAH KAMRAJ SUMER MAL. — RESPONDENT

Date of Decision : 02-03-1976

Acts Referred:
Income Tax Act, 1961 — Section 21

Citation : (1976) 5 CTR 156

Hon'ble Judges : C. S. P. Singh, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

C. S. P. Singh, J. - The Additional Judge (Revision) Sales Tax referred the following two questions for our opinion :

"(1) Whether under the circumstances of the case there was sufficient compliance with the principles of natural justice if, the extracts of the transactions as disclosed from the account books of the third party were made known to the assessee and full opportunity was given to him to disprove them ?

(2) Whether under the circumstances of the case it is necessary for the Sales Tax Officer to give an opportunity to the assessee to cross-examine the person in whose account book transactions relating to this assessee were detected. ?"

The facts necessary for answering the reference fall within a narrow ambit. The assessee deals in glass bangles. The Sales Tax Officer obtained an extract from the account book of M/s. Kunji Lal Har Dayal which had been sized in a raid by the Income Tax Department. This extract contained entries regarding purchases of liquid gold made by the assessee. Consequent on this information, proceedings u/s 21 of the Act were taken against the assessee. In these proceedings the extract obtained from the account books of M/s. Kunji Lal Har Dayal was made available to the assessee. The assessee made a statement before the Sales Tax Officer denying the purchases. It appears from the supplementary statement of the case submitted to us, that the assessee did not ask for any opportunity to controvert the correctness of the entries in the account books of M/s. Kunji Lal Har Dayal otherwise than by denying the transactions. Neither did he ask the Sales Tax Officer to afford any opportunity to him to cross-examine the proprietors of the firm M/s. Kunji Lal Har Dayal. The statement of the assessee was not accepted and reassessment made, accepting the purchases. An appeal was thereafter filed by the assessee. The only ground taken in respect of the extract of accounts was that the entries in the extract which had been filed have not been duly proved. The appellant authority rejected the contention of the assessee that the disputed purchases had not been made and dismissed the appeal. In revision it was again asserted that the entries in the account books of M/s. Kunji Lal Har Dayal had not been properly proved by the Department. From the supplementary statement of the case it appears, that it was urged by the assessee in revision, that as no witness had been examined by the Department to prove the purchases the entries should not be believed. The revising authority held that as the assessee had disputed the correctness of the entries they could not be accepted as correct, and it was necessary for the Sales Tax Officer to give an opportunity to the assessee to cross-examine the person who had made the entries. It as such remanded the matter.

2. We shall consider the questions referred in seriatim .As appears from the supplementary statement of the case and also the original statement of the case submitted that the extract of the entries of the account books of Firm Kunji Lal Har Dayal showing purchases of liquid gold by the assessee was made available to the assessee. The assessee did not lead any documentary evidence in rebuttal. It contented itself by leading oral evidence to deny the purchases. The Sales Tax Officer believing the documentary evidence, disbelieved the statement. The purchases were held to be proved on the basis of the extracts from the account books of M/s. Kunji Lal Har Dayal. The assessee was not taken by surprise by the Sales Tax Officer relying on this document. In fact he had full notice of the facts that the Department was relying upon the proof of the purchases on this extract, and led evidence to rebut it. In these circumstances it cannot be said that any principle of natural justice was violated in relying upon the extracts of the account books. We are therefore of the view that there was sufficient compliance of principles of natural justice, inasmuch as the extracts had been made available to the assessee and it had full opportunity to disprove them. As regards the second question, from the statement of the case as also from the supplementary statement now submitted to us the Sales Tax Officer had not denied opportunity to the assessee to cross-examine the proprietors of the firm M/s. Kunji Lal Har Dayal or the person who made the entries in their books. It was the assessee himself who did not take any steps to request the Sales Tax Officer to summon any person of the firm or cross-examination. He contended himself by leading oral evidence to deny the transaction. This being so the Sales Tax Officer was not bound to summon persons from the Firm M/s. Kunji Lal Har Dayal for purposes of cross-examination.

3. In view of these conclusions we answer the first question in the affirmative and the second question in the negative, both in favour of the Department and against the assessee. As none has appeared to oppose the reference there shall be no order as to costs.