**(1976) 02 AHC CK 0017**

**In the Allahabad High Court**

**Case No :** S.T.R. No. 691 of 1973

Commissioner of Sales Tax APPELLANT

Vs

Murli Dhar Shyam Saran RESPONDENT

**Date of Decision :** 02-02-1976

**Acts Referred:**

**Citation :** (1977) 39 STC 98

**Hon'ble Judges :** R.M. Sahai, J;C.S.P. Singh, J

**Bench :** Division Bench

**Advocate :** J.C. Bhardwaj, for the Respondent

## Judgement

C.S.P. Singh, J.—The Additional Revising Authority, Sales Tax, Allahabad Range, has referred the following question for our opinion :

Whether, on the facts and circumstances of the case, the additional revising authority was legally justified in accepting the account books of the dealer despite the recovery, in the survey dated 18th December, 1965, of two unaccounted purchase vouchers of Rs. 783.38 and Rs. 101.70 and a letter of a businessman of Rewari addressed to the dealer in the light of the explanation of the dealer ?

2. The assessee deals in brasswares and scrap. In the assessment year 1965-66, he filed a return showing a turnover of Rs. 85,660. The Sales Tax Officer rejected the book version and estimated the turnover at Rs. 2,50,000. On appeal the turnover was reduced to Rs. 1,00,000. The assessee preferred a revision before the revising authority, who set aside the addition made by estimate and accepted the returned turnover.

3. While reducing the quantum of turnover from Rs. 2,50,000 to Rs. 1,00,000, the Assistant Commissioner held that although the account books of the applicant were properly maintained, yet, as on 18th December, 1965, when a survey was conducted, two bijaks of Rs. 783.38 and Rs. 101.70 were not entered in the books of account of the assessee, the books could not be accepted. The

 

revising authority has found that inasmuch as the account books of the applicant had been properly maintained, the mere fact that at the time of survey on 18th December, 1965, two bijaks relating to Rs. 783.38 and Rs. 101.70 were not posted in the books of account, were not sufficient for rejection. He also held that a letter purported to have been written by a businessman of Rewari suggesting that the assessee maintained two sets of accounts could not be relied on for rejection of the account books of the assessee, as the assessee was not the author of the letter and there was no other material on the basis of which such an inference could be drawn.

4. Counsel for the State has taken us through the order of the revising authority, as also the order of the Assistant Commissioner and contended that inasmuch as entries in respect of two bijaks aforesaid were not made by the assessee in his account books, the revising authority erred in accepting the book version. The order of the Assistant Commissioner shows that the entry in respect of these two items were not made in the books of account at the time of survey. There is no finding that, the assessee did not enter these transactions later. In fact, the assessee in his explanation before the Sales Tax Officer stated that the amount represented purchases made by the munim of the assessee, who had on a day earlier been advanced an amount of Rs. 1,000 and Rs. 10 for making purchases from Kanpur. In these circumstances and in the absence of any finding to this effect, it cannot be contended that no entries in respect of these transactions were made at all in the account books. The Judge (Revisions), Sales Tax, is the last fact-finding authority and it was open to him to accept the book version after considering the evidence. It cannot also be said that the finding recorded by him in these circumstances is based on no material or is arbitrary.

5. We, accordingly, answer the question referred in the affirmative, against the department and in favour of the assessee. The assessee is entitled to his costs which we assess at Rs. 200.

 