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(1985) 09 AHC CK 0020

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 130, 134 and 135 of 1981

Commissioner, Sales Tax — APPELLANT

Vs

Jalpa Lime and Flour Mill — RESPONDENT

Date of Decision : 16-09-1985

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (1986) 62 STC 99

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : The Chief Standing, for the Appellant; S.K. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Misra, J.—These are three connected revisions filed u/s 11(1) of the U.P. Sales Tax Act, 1948 (for short the Act). These revisions have been filed beyond the prescribed period of limitation. A prayer has been made seeking condonation of delay u/s 5 of the Limitation Act. Having perused the grounds mentioned in the accompanying affidavit explaining the delay, I find that sufficient cause has been shown seeking condonation of delay. The delay is accordingly condoned.

2. I have heard the learned State counsel on merits in these revisions. The opposite party-assessee, M/s. Jalpa Lime & Flour Mill, Jalpa Nala, Faizabad, District Faizabad, is a manufacturer of lime and surkhi. The Assistant Sales Tax Officer rejected the return submitted by the assessee for the assessment years 1972-73 and 1973-74 vide order dated 16th October, 1976, a copy of which has been annexed as annexure 1 to the petition. The Assistant Sales Tax Officer rejected the account books and determined the turnover by the rule of best judgment. Aggrieved by the said order, two appeals were filed by the assessee. Appeal No. 1726 of 1976 which related to the assessment year 1973-74 was allowed and the return submitted by the assessee was accepted but his Appeal No. 1726 of 1976 which related to the assessment year 1972-73 was rejected

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vide judgment and order dated 3rd February, 1979. It appears that two appeals relating to the assessment years 1974-75 and 1975-76 were also rejected by the appellate authority vide order dated 11th April, 1979. The assessee-opposite party, therefore, preferred three appeals and all these three appeals were heard and allowed by a common judgment and order passed by the Tribunal vide judgment and order dated 13th December, 1980. The return submitted by the assessee was accepted by accepting the account books maintained by the assessee. These three revisions have been filed by the Commissioner, Sales Tax, U.P., Lucknow, against the order dated 13th December, 1980. I have heard the learned counsel for the State at length and perused the impugned order very carefully.

3. Learned State counsel urged that the Tribunal acted illegally and without jurisdiction in accepting the account books maintained by the assessee which were rejected by the lower appellate court as well as the Assistant Sales Tax Officer. Learned counsel urged that in these revisions, the question of law involved for determination is whether on the facts and circumstances of the case and the material available on record, the learned Member, Tribunal, Sales Tax, was legally justified in accepting the account books in the absence of production register and purchase vouchers of kankar. I have perused the impugned order passed by the Tribunal and I find that very good reasons have been assigned by the learned Member, Tribunal, in accepting the account books maintained by the assessee. The explanation offered by the assessee for not issuing cash memo and the production register has been accepted by the Tribunal and there appears to be no infirmity in the finding.

4. Apart from it, the question whether the account books should or should not have been accepted by the Tribunal while deciding the appeals does not raise a question of law and so this question cannot be agitated in these revisions as has been held by this Court in S.T. R. No. 620 of 1982 (Commissioner, Sales Tax, U.P., Lucknow v. Shyam Lal and Co. [1984] 57 STC 31) decided on 7th December, 1983, where it has been held, "A decision of Tribunal on facts is final, except where it can successfully be assailed on the ground that there is no evidence to support the findings on questions of fact recorded by the Tribunal or that the findings are based on inadmissible evidence or the same are contrary to evidence on record. But neither the question about the sufficiency or insufficiency of material on record in support of the finding arrived at, either rejecting or accepting the account books, nor the question about the correctness or otherwise of the inference drawn as regards genuineness, truthfulness and accuracy of the account books or as regards to veracity of any other evidence can be said to raise any question of law. The findings recorded on these matters are essentially questions of facts and the correctness of the same cannot be questioned and canvassed in revision u/s 11(1) of the Act."

5. In view of the above, I find that no case has been made out for interference by this Court in exercise of its revisional powers u/s 11(1) of the Act.

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6. In the result, these revisions fail being devoid of merits and are accordingly dismissed.

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