(1983) 12 AHC CK 0026

In the Allahabad High Court

Case No : Sales Tax Revision No. 620 of 1982

Commissioner, Sales Tax APPELLANT

Vs

Shyam Lal and Co. RESPONDENT

Date of Decision : 07-12-1983

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)
Uttar Pradesh Trade Tax Act, 1948 — Section 13

Citation : (1984) 57 STC 31

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

Bench : Single Bench

Advocate : Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Misra, J.—Opposite party-assessee had manufactured bricks and for the assessment year 1978-79 disclosed the taxable turnover at Rs. 45,772.59. A tax liability of Rs. 3,115.67 was shown by the dealer. The assessing authority did not accept the account books maintained by the dealer and determined taxable turnover at Rs. 1,72,088 and assessed the tax at Rs. 12,700 on the basis of rule of best judgment assessment.

2. Aggrieved by that order the dealer filed an appeal, which was heard and decided by Assistant Commissioner, Sales Tax (Judicial), who partly allowed the appeal and determined the turnover at Rs. 1,18,180.00. The tax assessed came to Rs. 7,762. Still feeling aggrieved by the order of the appellate authority, the dealer went in second appeal, which was heard and allowed by the Sales Tax Tribunal (hereinafter referred to as the Tribunal) by order dated 10th August, 1982. The Tribunal accepted the account books maintained by the assessee and accepted the disclosed taxable turnover of Rs. 45,772.50 and the tax for the year 1978-79 was reduced to the admitted amount. Excess tax, if paid, was ordered to be refundable to the dealer. The Commissioner, Sales Tax, U. P., has preferred revision against the said order u/s 11(1) of the U. P. Sales Tax Act (hereinafter

referred to as the Act).

3. Learned standing counsel for the applicant urged that this revision involves the determination of the legal question : "whether the account books, which were not produced by the dealer for inspection at the time of survey, deserved to be rejected and adverse inference could be drawn against dealer for non-production of the account books ?"

4. In the present case survey was made on 24th May, 1978, in the presence of a partner of the firm, Sri Kundan Lal, but no books of account were available. The assessing authority as well as the first appellate court suspected the correctness of the stock register and rejected the account books on the aforesaid ground. It was urged before the Tribunal that the books of account could not be rejected merely on the ground that these were not available at the time of survey. The Tribunal agreeing with this submission and placing reliance upon certain decisions of this Court, observed that the observation of the appellate authority that the stock register has been manipulated is not borne out by any fact on record, and as such, the only reason for rejection of accounts which remained for consideration was whether the same could be rejected on the ground that the account books were not produced for inspection at the time of survey. The Tribunal held that this could not be a valid ground for rejecting the account books.

5. Learned standing counsel referred to a decision Banwari Das Ganpat Lal v. Commissioner of Sales Tax 1976 UPTC 198 and urged that if the account books were not produced for inspection at the time of survey, an adverse inference could be drawn. In paragraph 2 of the judgment of Banwari Das Ganpat Lal 1976 UPTC 198 it was observed that "section 13 of the Sales Tax Act cast a duty on the assessee to produce the account books whenever demanded by a surveying officer. In performance of the statutory duties, if the surveying officer visits the shop of the assessee and he is denied the assistance of either looking into the account books or examining the material, which is relevant for determining whether the assessee is maintaining his account books properly or not or is trying to evade payment of tax, then a reasonable inference can be drawn that the assessee is trying to conceal the best possible evidence."

6. There is no dispute with the proposition of law laid down in the aforesaid decision. It would be quite correct to say that the aforesaid adverse inference can be drawn against the assessee on his not producing the account books for inspection at the time of survey. He would also incur a liability of penalty for such action. But it would be quite difficult to accept that the account books must be rejected outright merely on the ground that the same were not produced for inspection at the time of survey. The assessing authority will have to scrutinize with great care and caution the account books when produced subsequently in support of his claim by the assessee and if any error is found in them, then in that event there would be justification for holding that they were not maintained properly or that those were subsequently manipulated and got prepared after survey was done. In my opinion the account books of the dealer cannot be

rejected outright merely because those (books) were not produced for inspection at the time of survey.

7. In Paramount Trading Corporation v. Commissioner of Sales Tax, U. P. 1976 UPTC 245 the Division Bench of this Court held that "inspection of the premises of a dealer are made u/s 13 of the Act. Section 13(2) of the Act empowers the surveying officer to inspect the books of the assessee. In the event of the assessee not co-operating with surveying officer by not permitting inspection of the books, the Act makes provisions for penal action. But the mere fact that the assessee did not co-operate with the surveying officer cannot lead to the result that the account books maintained by him are not reliable especially when they were accepted in respect of non-ferrous metal business. There must be some material apart from these circumstances for rejecting the account books."

8. Similar view was taken in Eastern Tube Company v. Commissioner of Sales Tax 1980 UPTC 132 and Eastern Tube Company, Gopiganj, Varanasi v. Commissioner of Sales Tax 1980 UPTC 575.

9. In this view of the matter, I am unable to agree with the learned standing counsel that the Tribunal acted illegally in not rejecting the account books on the ground that the same were not produced by the assessee for inspection at the time of survey. The Tribunal has held that it is not borne out from the record that the stock register has been manipulated and I am unable to find any error in that finding. The Tribunal has recorded a finding accepting the account books after taking into consideration material on record. Whether the account books have been rightly accepted to have been correctly and properly maintained does not raise any question of law so as to call for interference by this Court in exercise of revisional powers u/s 11(1) of the Act.

10. A finding of fact recorded by the Tribunal cannot be interfered with in revision merely on the ground that a different view can possibly be taken in a case. Whether from a particular material on record, adverse inference should be drawn against the assessee and the account books deserved to be rejected on that ground or not, is a matter which lies entirely within the competence of the authority having jurisdiction to record a finding of fact. Thus if the appellate authority after considering the material on record forms an opinion that a particular inference should be drawn and records a finding, either rejecting the account books or accepting the same, it cannot be said to give raise to any question of law so as to call for interference by this Court in exercise of revisional powers u/s 11 of the Act. A question of fact becomes a question of law if the finding is either without evidence or if the finding is contrary to the evidence. But the inference drawn on the consideration of the documents and other evidence led by the parties, cannot be said to suffer from any error of law merely on the ground that a different view can possibly be taken on that evidence or in respect of any particular document or evidence. 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 book, 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. Whether in a particular case the account books should have been accepted or rejected is essentially a question of fact and does not give rise to a question of law. The only question that can arise in such a case is whether there is any material for rejecting the assessee''s account books and if the lower appellate Court, after taking into consideration the material on record, has either accepted or rejected the account books, the finding arrived at on the inference drawn from the evidence by the appellate Court cannot be said to raise any question of law so as to call for its scrutiny in revision u/s 11(1) of the Act with regard to its correctness or otherwise.

11. In the present case I find that the Tribunal has, after taking into consideration all the facts and circumstances of the case and material on record, accepted the account books of the dealer, and there appears to be no legal error in it. The case stands concluded by the finding of fact and does not involve any question of law so as to call for interference by this Court in exercise of re visional power u/s 11 of the Act.

12. In the result, the revision fails and is accordingly dismissed. In the circumstances of the case, I, however, direct that the parties shall bear their own costs.