(2009) 08 AHC CK 0263

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Mahavir Prasad Prahlad Rai — RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11
Uttar Pradesh Trade Tax Act, 1948 — Section 11
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 08 AHC CK 0263

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This revision has been filed by the department u/s 11 of the U.P. Trade Tax Act, 1948 against the judgment and order dated 5th July, 2007 passed by the Trade Tax Tribunal, Lucknow for the assessment year 2002-03-State.

2. In the absence of the assessee, I have heard Sri Sanjay Sarin, learned Counsel for the department and gone through the material available on record.

3. From the record, it appears that the assessee is engaged in the sale and purchase of Galla, tilhan, wheat etc. and also acting as commission agent as ex-U.P. Principal. A survey was conducted in the business premises of assessee on 4.7.2003 where several discrepancies in the books of accounts were found. On the basis of the survey report, the Assessing Officer has rejected the books of accounts and estimated the turn-over and levied the tax vide its order dated 31st March, 2004. Being aggrieved, the assessee has filed the first appeal. The First Appellate Authority again estimated the turn-over and reduced the tax. Not being satisfied, both the parties have filed second appeal before the Tribunal, who has dismissed both the appeals by upholding the order of the First Appellate Authority. Being still aggrieved, the department has knocked the door of this Court through the present revision.

4. By considering the totality of the facts and circumstances of the case, it appears that the Assessing Officer has estimated the turn-over and levied the tax. The First Appellate Authority again estimated the turn-over and reduced the tax which was upheld by the Tribunal.

5. This Court has observed that estimation is a question of fact in a number of cases including T.T.R. No. 265 of 2008, Commissioner Trade Tax, U.P., Lucknow v. Jai Durga Steels, Tal Katora Road, Lucknow and T.T.R. No. 81 of 2000, Commissioner, Trade Tax, U.P., Lucknow v. Kanhaia Lal Gopal Das Sarraf, Aminabad, Lucknow. Similar views were held in the case of New Plaza Restaurant Vs. Income Tax Officer, and generally, Court should not interfere in such matters as per the ratio laid down in the case of Zora Singh Vs. Commissioner of Income Tax,

6. No question of law emerges from the impugned order of the Tribunal. Hence, the same is hereby sustained along with the reasons mentioned therein.

7. The revision filed by the department is dismissed.

