(2014) 09 AHC CK 0182

In the Allahabad High Court

Case No : Trade Tax Revision No. 24 of 2001

Commissioner Trade Tax APPELLANT

Vs

Niwas Ji Oil Refiners Pvt. Ltd. RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 10(12), 21, 21(2)

Citation : (2014) 09 AHC CK 0182

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Manish Mishra, Advocate for the Respondent

Judgement

B. Amit Sthalekar, J.—This trade tax revision arises out of the order passed by the Trade Tax Tribunal, Lucknow dated 16.06.2000 although in the memo of revision it has wrongly been mentioned as having been passed by Sri V.N.S. Tripathi in Assessee Appeal No. 377 of 1993 u/s 10 of the U.P. Trade Tax Act.

2. This is a revision filed by the revisionist on the following question of law:

"Whether on the facts and in the circumstances of the case the Trade Tax Tribunal was legally justified to quash the assessment order dated 16.01.1992 under Section- 21 of the Act in view of the opinion expressed in lines 6 to 7 on page-6 of the order that the reduction by the Deputy Commissioner (Appeal) in the turnover assessed under Section- 21 of the Act was uncalled for ?"

3. An order of assessment was passed by the Assessing authority for the year 1983-84 against the respondents Sri Niwas Ji Oil Refiners Pvt. Ltd. Aggrieved the respondent filed an appeal No. 429 of 1993. The assessee also filed an appeal No. 377 of 1993. These appeals were principally directed with regard to the findings recorded by the Assessing Authority u/s 21 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as the Act, 1948). There was a difference of opinion between the two members constituting the Tribunal, namely, Sri V.N.S. Tripathi and Sri Q.A. Naqvi. Sri Q.A. Naqvi gave his opinion on 24.02.2000 and Sri V.N.S.

Tripathi gave his opinion on 22.03.2000 on the findings with regard to Section 21 of the Act, 1948. The matter was referred by the Chairman of the Tribunal u/s 10(12) of the Act, 1948 to a 3rd member Sri P.K. Jain. Sri P.K. Jain gave his opinion on 03.06.2000 concurring with the opinion of Sri Q.A. Naqvi which was thereafter accepted by a bench of a Tribunal comprising Sri S.A. Siddhiqui and Sri Q.A. Naqvi. The assessee''s appeal No. 377 of 1993 for the assessment year 1983-84 was accepted on the point of the assessment proceedings being barred by time in view of the provisions of Section 21 of the Act, 1948.

4. I have heard Sri S.M.K. Chaudhary, learned Senior Counsel assisted by Sri Vaibhav Pandey, for the respondents and Sri Sanjeev Shankhdhar, learned Additional Chief Standing Counsel for the revisionist.

5. The principal ground for assailing the order of the Tribunal by the revenue is that there was sufficient material on record for the Assessing Authority to have issued the notice dated 25.03.1988 and therefore, the same should have been accepted by the Tribunal. He has further assailed the order of the Tribunal on the ground that the assessment proceedings could not have been said to have become time barred u/s 21 of the Act, 1948. In support of his submission reference was made to the findings recorded by the Assessing Authority. For a proper appreciation of the case it would be necessary to refer the provisions of Section 21(2) of the Act, 1948 as it stood on the relevant date which reads as follows:

"(2) Subject to the provisions of this section no order of assessment under any proviso of this Act for any assessment year shall be made after the expiration of four years from the end of such year."

6. Thus, a perusal of the provisions of sub section (2) of Section 21 of the Act, 1948 would leave no doubt that no order of assessment under any proviso to the Act for any assessment year could have been made after the expiration of four years from the end of such year.

7. The learned counsel for the revisionist in support of his submission referred to the findings recorded by the Assessing Authority in his order dated 16.01.1992 filed as Annexure-1 to the memo of revision. From the documents on record it emerges that there was a report by a Special Investigation Branch (SIB) in a survey conducted by it and the Special Investigation Branch submitted its report only on 19.08.1988 and all the material which has been referred to in the order of Assessing Authority dated 16.01.1992 is of the period of four years prior to 19.08.1988, therefore, the period of four years having lapsed, the Tribunal in my opinion is absolutely correct in taking the view that the assessment proceedings had lapsed and that sanction of the Commissioner for issuing a fresh notice had not been taken. However, so far as this observation of the Tribunal is concerned that fresh sanction of the Commissioner was required to be taken is also not correct inasmuch as under the amendment of 1978 there was no provision in sub section 2 of Section 21 of the Act that proceedings could have been initiated

beyond the period of four years but with the sanction of the Commissioner. Therefore, the legal and factual position which emerges is that after expiry of four years the fresh assessment proceedings could not have been initiated at all against the assessee in view of the law as it stood on the relevant date.

8. For the reasons aforesaid, I do not find any illegality or infirmity in the order of the Tribunal dated 16.06.2000.

9. This revision fails and is accordingly dismissed.

10. On 02.09.2014 this Court had directed the office to list the case alongwith the record of Trade Tax Revision No. 120 of 2000. Similar order was also passed on 08.12.2009. On 02.09.2014 concerned office staff appeared in the Court and informed that the file is not traceable. They were directed to trace out the record of TTR No. 120 of 2000 and it was made clear that the Court will not accept any explanation if the record is not made available. Today again when the case came up for final arguments, the record of TTR No. 120 of 2000 was not made available and Sri A.K. Shashank, Group In-charge TTRE/CR and the S.O., FAFO, Sri P.K. Rastogi put up a written note dated 04.09.2014 stating that despite best effort the record could not be traced out and further a week''s time be granted to trace out the record of TTR No. 120 of 2000. This is a shocking state of affairs that inspite of the order of this Court dated 08.12.2009 and again on 02.09.2014, the record of TTR No. 120 of 2000 was not made available to the Court when the arguments in the connected TTR were going on. This is a scandalous state of affairs that the record of the said case is being withheld from the Court on the pretext of its being under trace. The learned counsel for the revisionist and the opposite party inform the Court that TTR No. 120 of 2002 was earlier dismissed in default and later a recall/restoration application has been filed which is still pending. If that be so it should not have been difficult for the office to trace the movement of the file. The office staff who were present in Court on 02.09.2014 were informed of this fact. The question however remains as to whether the office has made any effort to trace out the TTR No. 120 of 2000 and if it is lost whether any effort has been made with a report to that effect, for reconstruction of the record. It is a case where the record has either been lost or placing of the record before the Court is being delayed on one pretext or other deliberately and it is a case of gross misconduct and requires action against the concerned officers responsible for maintaining of the records.

11. Let a copy of this order be placed before the Senior Registrar to hold departmental proceedings against the concerned officers expeditiously.