**(2009) 12 AHC CK 0360**

**In the Allahabad High Court**

Commissioner, Trade Tax — APPELLANT

Vs

Varanasi Bottling Company Pvt. Ltd. — RESPONDENT

**Date of Decision :** 01-12-2009

**Acts Referred:**
Uttar Pradesh Trade Tax Act, 1948 — Section 21

**Citation :** (2010) 29 VST 251

**Hon'ble Judges :** Abhinava Upadhya, J

**Bench :** Single Bench

**Final Decision :** Dismissed

# Judgement

Abhinava Upadhya, J.—Heard learned standing counsel appearing for the Department and Sri K. Saksena, learned Counsel appearing for the opposite party-dealer.

2. The opposite party-dealer carries on the business of manufacture and sale of aerated water, cold drink, etc. The assessing authority after accepting the books of account made original assessment on November 10, 1993. It appears that on July 12, 1993 a survey was made at the business premises of the dealer by the officers of the Special Investigating Branch (SIB) where certain loose documents were seized. It appears that on the basis of the said loose papers an inference was drawn that the dealer had suppressed sale in his books of account that were relied upon for framing of original assessment and therefore, notice was issued for reopening the assessment u/s 21 of the U. P. Trade Tax Act, 1948.

3. Aggrieved by the reopening of assessment the dealer filed appeal before the first appellate authority which determined the evaded turnover to a sum of Rs. 10,000, but accepted the explanation of the dealer that the paper seized, namely, parchas Nos. 6 and 11, do not reflect the actual turnover of sales but are inflated figures shown only for the purposes of obtaining higher cash credit limit from a bank.

4. Against the aforesaid order of the first appellate authority, the Department as

 

well as dealer both filed cross-appeal before the Tribunal and the Tribunal considered the explanation offered by the dealer to the authorities that the figures mentioned in the loose documents found at the survey do not reflect the actual sale as has been made by the dealer, but are the figures for obtaining higher cash credit limit from the bank. The Tribunal, thereupon recorded a finding that there was no error in the order of the first appellate authority and dismissed both the appeals.

5. Aggrieved by the said order, the Department has filed this revision on the ground that the loose documents found during survey have been admitted by the dealer to be his documents and, therefore, the figures shown in the said documents were rightly relied upon by the assessing officer for determining the turnover. The learned standing counsel has relied upon the explanation attached to Section 8 of the U.P. Trade Tax Act for the aforesaid purpose.

6. On the other hand, learned Counsel for the dealer has stated that the 6 Government is entitled to levy tax on the actual sale made by the dealer and not on imaginary sale as projected by the dealer for some other purpose. The learned Counsel has further stated that this Court in its judicial pronouncement has accepted such an explanation given by the dealers.

7. In similar circumstances, in the case of Commissioner of Trade Tax v. 7 Shri Ram Food, Moradabad reported in [2004] UPTC 680, this Court held as under:

It is claimed that the papers were in the nature of projected, balance sheet and trading account which was nothing to do with the real transactions. First appellate authority and the Tribunal have accepted the explanation of the dealer and accordingly accepted the books of account and disclosed turnover. Finding of Tribunal is the finding of fact and cannot be said to be perverse or without any basis. No question of law are involved in the present revision.

8. Similar view has also been taken by this Court in the case of Asha Industries Vs. Commissioner, Trade Tax, wherein it has been held as under:

The Joint Commissioner (Appeals) was of the view that the projected turnover depicted in the balance sheet filed before the bank was only for the purposes of obtaining loan and also for increase of the cash credit limit. It also relied upon two decision of this Court in the case of Commissioner of Sales Tax, U.P. v. Prakash Engineering Co. reported in [1970] UPTC 426 and also in the case of Commissioner of Trade Tax v. Shri Ram Food reported in [2004] UPTC 680.

9. In the aforesaid view of the matter, I do not see any infirmity in the order of the Tribunal, which is otherwise also concluded by finding of fact which cannot be said to be perverse or without any basis.

10. The revision lacks merit and is, accordingly, dismissed.