(2010) 01 AHC CK 0300

In the Allahabad High Court

Deva Brick Field APPELLANT

Vs

Commissioner, Trade Tax, Uttar Pradesh, Lucknow RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 22, 9

Citation : (2012) 51 VST 62

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Pradeep Agarwal, for the Appellant; Shanjay Sareen, for the Respondent

Judgement

Anil Kumar, J.—Heard Sri Pradeep Agarwal, learned counsel for the revisionist and Sri Shanjay Sareen learned counsel for the respondent. The facts of the present case, in brief, are that M/s. Deva Brick Field, Gopalpur, Barabanki (hereinafter referred to as, "the revisionist") is a registered dealer under the U.P. trade Tax Act, 1948. Initially a survey was conducted on May 13, 1986 on the basis of which notices were issued to the assessee for the assessment year 1986-87 and after receiving his reply, the assessing authority rejected the book version of the assessee by order dated January 25, 1991 and had completed the assessment on a turnover of Rs. 6,72,360. Since there was calculation mistake as such the assessing authority invoking the provisions as provided u/s 22of the U.P. Trade Tax Act, 1948 by assessment order dated February 27, 1991 had reduced the turnover by a sum of Rs. 5,08,670 and a tax which payable by the assessee was assessed to the tune of Rs. 42,747 for the assessment year 1986-87.

2. Feeling aggrieved by the order dated February 27, 1991 passed by the assessing authority, the revisionist had preferred an appeal u/s 9 of the Act before the first appellate authority which was numbered as Appeal No. 370 of 1991 which was partly allowed vide order dated August 11, 1992 by reducing the tax to the tune of Rs. 29,574. The order dated August 11, 1992 passed by the

first appellate authority was challenged before the U.P. Trade Tax Tribunal, Bench III, Lucknow, by the revisionist as well as review authority (Commissioner, Trade Tax) by means of second appeals which were numbered as Second Appeal No. 598 of 1992, Dewa Brick Field, Gopalpur, Barabanki v. Commissioner, Trade Tax, Uttar Pradesh, Lucknow and Second Appeal No. 798 of 1992 (Commissioner, Trade Tax, Uttar Pradesh, Lucknow v. Dewa Brick Field, Gopalpur, Barabanki), respectively.

3. The Tribunal by order dated September 10, 2001 dismissed the Second Appeal No. 598 of 1992 filed by the revisionist whereas Second Appeal No. 798 of 1992 filed by the Commissioner of Trade Tax, U.P., Lucknow, was partly allowed and the tax liability was increased by a sum of Rs. 10,218.

4. Aggrieved by the order dated September 10, 2001, passed by the Trade Tax Tribunal, Bench III, Lucknow, the revisionist has filed the present revision before this court u/s 11 of the U.P. Trade Tax Act, 1948.

5. I have heard the learned counsel for the parties and gone through the record. In the instant case, it is clearly established from the record that the assessment order passed by the assessing authority was based on estimation after rejecting the book version of the revisionist and thereafter the order passed by the first appellate authority as well as the U.P. Trade Tax Tribunal, Bench III, Lucknow, were also based on estimation.

6. It is needless to say that when the order is passed on the basis of estimation then the estimation cannot be said to be a question of law as held in the case of Biraj Kavar Galada, rep. by her L/R M.C. Galada and in the case of Zora Singh Vs. Commissioner of Income Tax, the court has observed the estimation is a question of fact.

7. The said view was further reiterated by this court in T.T.R. No. 163 of 2007 (Commissioner, Trade Tax v. Chaudhary Brick Field Gonda) decided on July 30, 2009 and T.T.R. No. 91 of 2005 (Commissioner of Trade Tax, Lucknow v. Swastic Enterprise Jain Dharmshala Bhawan Charbagh, Lucknow) decided on July 28, 2009 wherein it was held that estimation is a question of fact.

8. Further at the time of adjudicating and deciding the revision u/s 11 of the Trade Tax Act this court while exercising the power of judicial review can interfere only in the order passed by the Tribunal when the question of law is involved and not the question of fact.

9. In this regard the honourable Supreme Court in the case of Commissioner of Sales Tax, U.P. v. Kumaon Tractors and Motors, (2002) 9 SCC 379 has held as under :

... It appears that the High Court ignored the provisions of section 11 of the Trade Tax Act which confers limited jurisdiction to interfere with the order of the Tribunal only on the question of law, that too the said question of law is required to be precisely stated and formulated. Instead of deciding the question of law, the High Court simpliciter reappreciated the evidence and ignored the material documents maintained and produced by the assessee, that is, books of accounts, bills and form C submitted by it. In this view of the matter, the impugned order cannot be sustained.

10. In view of the abovesaid fact as per settled, proposition of law as laid down by the apex court and by this court while exercising the jurisdiction u/s 11 of the Trade Tax Act this court has got a very limited jurisdiction to interfere with the order of the Tribunal, i.e., only when the question of law arises as in the present case there is no question of law whatsoever arises and only question of fact is involved from the order passed by the Tribunal, which is under challenge. Hence no interference is required in the Tribunal''s order. Accordingly, the present revision filed by the revisionist lacks merits. It is dismissed accordingly.

No order as to costs.