(1986) 01 AHC CK 0027

In the Allahabad High Court

Case No : Sales Tax Revision No. 100 of 1980

Ganesh Jewellers APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (1987) 66 STC 259

Hon'ble Judges : H.N. Seth, C.J

Bench : Single Bench

Advocate : S.C. Misra, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, C.J.—The assessee in the instant case is M/s. Ganesh Jewellers, Chowk, Lucknow. It carries on the business of dealing in silver ornaments. For the assessment year 1972-73, it disclosed its gross turnover of Rs, 69,446.97 and claimed exemption for the sales made to registered dealers against 3-Ka forms. The net turnover was disclosed at Rs. 9,207.54. Rejecting the accounts, the assessing officer fixed the net turnover at Rs. 5,00,000 which was reduced in appeal to Rs. 3,00,000; Aggrieved, the assessee went up in revision before the Additional Judge (Revisions), Sales Tax, Lucknow and urged that its accounted version deserved to be accepted. In the alternative, it prayed for further reduction in the net turnover as determined by the appellate authority. The Commissioner was also aggrieved by the order of the Assistant Commissioner (Judicial), Lucknow, reducing the turnover as determined by the Sales Tax Officer to Rs. 3,00,000. He accordingly also preferred a revision before the Judge (Revisions), Sales Tax. The learned Judge (Revisions), Sales Tax, dismissed both the revisions, vide his order dated 19th of April, 1980. Aggrieved, the assessee has invoked the revisional jurisdiction of this Court u/s 11(1) of the Sales Tax Act.

2. It is contended on behalf of the assessee that the sales tax authorities were, in the circumstances of the case, not justified in rejecting the accounted version of the assessee with regard to its turnover for the assessment year 1972-73. The Judge (Revisions) pointed out that the purchases of old bullion and ornaments made by the assessee were not supported by regular purchase vouchers and while the names of the sellers had been noted, their addresses were not noted by the assessee with the result that the purchases were not verifiable. He also pointed out that the details of the opening and closing stocks were not furnished and no stock taking had been done by the assessee. He also held that the assessee used to take out ornaments outside Lucknow for sale and the challans through which the ornaments were taken were not preserved and were not forthcoming. He held that in the circumstances, the accounted version was not properly verifiable and it was difficult to place reliance on the turnover of the sales disclosed by the assessee. It will thus be seen that the sales tax authorities had proceeded to ignore the accounted version of the assessee and to make the best judgment assessment as they were not in a position to verify the correctness of the accounted version for the following four reasons:

(1) That the transactions entered into by the assessee were not supported by regular purchase vouchers.

(2) While the names of the sellers had been noted, their addresses had not been noted by the assessee.

(3) The details of the opening and closing stocks were not furnished and no stock taking was done by the assessee.

(4) That the assessee had taken ornaments outside Lucknow also for sale and the challans through which the ornaments were taken were not preserved but destroyed.

3. Sub-section (3) of Section 7 of the U.P. Sales Tax Act runs thus:

If no return is submitted by the dealer under Sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof.

4. According to this Sub-section, the assessing authority can make the best judgment assessment only if (i) the dealer had not submitted any return under Sub-section (1) within the period prescribed or (ii) if the return submitted by him appeared to the assessing authority to be incorrect or incomplete. Clearly, the instant case, if at all, can be covered by the second condition and that the action of the assessing authority in rejecting the assessee''s books of accounts and making the best judgment assessment could be justified only if there was material before the assessing authority from which it could appear to it that the return submitted by the assessee was either incorrect or incomplete. Under this

section the assessing authority could not proceed to institute an enquiry for making the best judgment assessment merely for the reason that it was not in a position to verify or check its correctness.

5. In the instant case, the perusal of the orders passed by the authorities below clearly indicate that they, at any stage, had any reason for thinking that the return submitted by the assessee was incorrect or incomplete. They proceeded to make the best judgment assessment merely for the reason that enough material had not come up before them to enable them to scrutinise and check the assessee''s accounts. This, in my opinion, was clearly an erroneous approach made by the authorities.

6. Moreover, I find that the four reasons mentioned by the assessing authority for making the best judgment assessment are not such which by themselves could make it appear to the assessing authority that the return submitted by the assessee was either incorrect or incomplete. Section 12 of the U.P. Sales Tax Act as it stood at the relevant time, obliged every dealer to keep and maintain a true and correct account showing the value of the goods sold and bought by him. Rule 72 of the U.P. Sales Tax Rules required that every dealer liable to pay tax under the Act and every person licensed u/s 3-E, shall maintain a true and correct account of all his purchases, sales and stocks showing quantity and value for verification of the accuracy of his turnover. The sales tax authorities nowhere found that the assessee did not maintain the account of various purchases and sales made by it. Neither the Act nor the Rules anywhere required that a dealer like the assessee was required to maintain purchase vouchers or to note down the addresses of the persons to whom it had sold the articles. Merely because the assessee did not maintain the purchase vouchers or did not note down the addresses of the persons to whom the goods had been sold, no inference could be drawn or suspicion raised that the account of sale and purchase maintained by the assessee was incorrect. Similar is the position with regard to non-maintenance of the challans in respect of the goods which the assessee had taken for sale out of the city of Lucknow.

7. So far as non-maintenance of the stock register by the assessee and nondisclosure of the opening and closing stock as required by Rule 72 is concerned, it may be pointed out that as held by this Court in the case of Cycle Emporium, Varanasi v. Commissioner of Sales Tax, U.P. 1979 UPTC 1141, stock register is not the primary account of an assessee. It is an extract made from the rokar and khata and the other accounts of the assessee where the purchases and sales are recorded. It is a record maintained by the assessee for his convenience so that he may be able to find out at a glance the amount of goods in his stock on any particular date. The Act does not make it incumbent upon an assessee to maintain a true and correct account of the purchases and sales. Insistence by the assessing authorities on the maintenance of stock register and rejection of accounts on account of an omission to do so without any other defect in the account maintained u/s 12 is not warranted by the law. This does not mean that

from the accounts maintained u/s 12 the stock valuation or the actual stock should not be capable of calculation. In case the books prepared u/s 12 are completely reliable in respect of the sales and purchases of each and every item whether it would be of a small or large quantity, the omission of stock register by itself cannot lead to the rejection of accounts.

8. In the result, I find nothing in the orders passed by the sales tax authorities to show that at any time it appeared to them that the account submitted by the assessee was incorrect in any manner. They merely proceeded to make the enquiry and make the best judgment assessment because they thought that the action of the assessee was blameworthy inasmuch as it did not maintain its incidental accounts in such a manner so as to assure the sales tax authorities with regard to the correctness of the account of sales and purchases kept by the assessee.

9. As in my opinion, the reasons given by the sales tax authorities after proceeding to make the best judgment assessment fall outside the ambit of Section 7(3) of the U.P. Sales Tax Act, the action of the sales tax authorities in rejecting assessee''s books of account and in proceeding to make the best judgment assessment cannot be sustained.

10. I may, however, make it clear that depending upon the facts of an individual case, the circumstances pointed out by the sales tax authorities in conjunction with other circumstances and material on the record, may provide a justification for-the assessing authority to feel that the return submitted by the assessee is incorrect but then it is for the sales tax authorities to look into the matter and to do the needful thereafter. It is not for this Court to express any concluded opinion on the question whether or not a case for rejecting the assessee''s account books and for making the best judgment assessment had in fact been made out. In this view of the matter, it is also not necessary for me to express any opinion whether or not the quantum of turnover of the assessee has been correctly determined by the appellate authority.

11. In view of the aforesaid discussion, the revision succeeds and is allowed. The impugned order of the Judge (Revisions), Sales Tax, as well as the order passed by the appellate authority and the original assessment order are quashed. The assessing authority shall now proceed to make the assessment afresh keeping in view the legal position indicated in the judgment. Parties shall, however, bear their own costs.