
(1976) 05 AHC CK 0014
In the Allahabad High Court
Case No : S.T.R. No. 390 of 1973

Jamuna Das Ram Kishan

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 20-05-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1976) 38 STC 443

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : G.D. Srivastava, for the Appellant; The Standing Counsel, for the Respondent

Judgement

C.S.P. Singh, J.

The Additional Judge (Revisions), Sales Tax, Kanpur, has u/s 11(4) of the U. P. Sales Tax Act referred the following question for our opinion :

Whether, on the facts and in the circumstances of the case, the order passed by the revising authority in the department's Revision No. 623 of 1969 is valid in view of the order of the revising authority in the assessee's Revision No. 1733 of 1968 passed earlier ?

2. The assessee carried on the business in Sutli jute goods, etc., in the year 1964-65. He declared a net turnover of Rs. 28,57,355.69. The Sales Tax Officer rejected the accounts and fixed the turnover as Rs. 31,10,000. An appeal was filed against this order before the Assistant Commissioner (Judicial), who reduced the turnover to Rs. 29,20,000. A revision was filed by the assessee before the revising authority, but that was dismissed. The department also preferred a revision against the order of the appellate authority, but that revision was not heard along with the revision of the assessee, as it appears to have been filed subsequently. The Additional Judge (Revisions) by his order dated 24th April, 1970, allowed the revision of the department and restored the order of the

Sales Tax Officer. The question that arises in the reference is as to whether the revising authority could, in view of its earlier order, restore the order of the Sales Tax Officer.

3. Mr. G.D. Srivastava, appearing on behalf of the assessee, contended firstly that inasmuch as the Judge (Revisions) had, in the earlier revision filed by the assessee finally disposed of the matter, the order of the Sales Tax Officer had merged with the revisional order and, that being so, the revising authority could not on the revision filed by the department restore the order of the Sales Tax Officer. In the alternative, it has been contended that the earlier revisional order, as respects the question as to the correct turnover to be assessed in the hands of the assessee, had become final and could not be reopened by the revising authority in a subsequent revision filed by the State.

4. So far as the first contention is concerned, that does not appear to us to be sound. u/s 10(2) of the Act, both the Commissioner of Sales Tax and any other person aggrieved by an order passed by the appellate authority can file a revision. The period of limitation for filing such an application in revision is one year [see Section 10(6) of the Act]. This being so, the Commissioner of Sales Tax or the aggrieved person can wait and file their revision application before the expiry of the period of limitation. The section also does not make it incumbent on a party to file his revision application as soon as the other party does. Normally, it may be that a party may after receiving notice of a revision application filed by the other party, file his own revision application in case he is aggrieved by the order of the appellate authority, but the law does not make it incumbent on him to do so. He can postpone the filing of his revision application before the period of limitation prescribed u/s 10(6) runs out. Section 10 does not contain any provision which destroys the right conferred by Section 10(2) of filing a revision in case the revision application of one party has been disposed of. In the absence of such a provision, we do not think it appropriate to apply the theory of merger, and hold that as soon as a revision application of one of the parties is disposed of, the other party loses the statutory right conferred on him by Section 10(2) to file a revision within the period prescribed by Section 10(6). We therefore reject the first contention.

5. The second contention requires close scrutiny, as no direct decision on this point has been brought to our notice. Our attention was invited to a decision of this court in Commissioner, Sales Tax, U. P., Lucknow v. Rama Hand Dwarika Dass Oil Mills S.T.R. No. 119 of 1958 decided on 30th November, 1962 (Allahabad High Court). In that case, an assessee had preferred an appeal against an assessment order and one question was decided in the assessee's favour and the case remanded to the Sales Tax Officer for passing a fresh assessment order after deciding other questions in the light of the observations made in the judgment. The assessee preferred a revision against the assessment order and impleaded the Commissioner. The revision was dismissed as premature without going into merits. Thereafter, the Commissioner filed a revision

application against the remand order in so far as it decided one point in the assessee's favour. This was dismissed on merits and the reference which came up before this court arose out of that order. It was urged in this court by the assessee that the Judge (Revisions) had exhausted his jurisdiction on account of his passing the earlier order rejecting the assessee's revision and, as such, the reference was incompetent. It was held that the subject-matter of the assessee's revision was its liability to be assessed on proceeds of other sales, while the subject-matter of the Commissioner's revision was different, inasmuch as it challenged the order of remand. In this view of the matter it was held that the revision application filed by the Commissioner was competent. This decision proceeded on the basis that the scope of the two revisions was different. In the present case, this does not appear to be the position. The order disposing of the revision application filed by the assessee was produced before us. At one stage we thought of calling for a further statement of the case so that the earlier order may be formally brought on the record, but as both the parties raised no objection to our looking into the order without our calling for a supplementary statement of the case, we have looked into it. Two contentions were raised by the assessee before the Judge (Revisions). One was that the account books were wrongly rejected by the Appellate Assistant Commissioner and, secondly, that the enhancement retained by the appellate authority was appropriate. The Judge (Revisions) rejected the first contention holding that the account books were rightly rejected. Considering the question as to whether the enhancement retained was proper, it held that the enhancement retained was 10 per cent and was not excessive. Thus, in the earlier revision, the contention of the assessee was that the turnover as returned by him should be accepted and the order of the Sales Tax Officer and also that of the appellate authority rejecting the turnover was unjustified. The Judge (Revisions), as has been seen, upheld an addition of 10 per cent over the turnover returned by the assessee.

6. Shri V.K. Mehrotra, the counsel for the State, urged that in the first revision it was not open to the State to urge that the turnover fixed by the Sales Tax Officer should have been accepted, as in view of the decision of this court in the case of *Madan Studio v. Assistant Commissioner (Judicial)* 1975 U.P.T.C. 58 the assessee and the Commissioner of Sales Tax could only urge such matters which do not go beyond the grounds of revision. This may be so, but it was open to the Commissioner of Sales Tax to urge in the revision filed by the assessee that the enhancement in the turnover made by the Appellate Assistant Commissioner should in any event be upheld as the order of the Sales Tax Officer enhancing the turnover was justified. In the revision filed by the assessee, in view of the pleas taken by him, the Judge (Revisions) not only considered the question as to whether the enhancement made by the Assistant Commissioner was justified, but also that (he turnover as disclosed in the account books should be accepted, the order of the Sales Tax Officer enhancing the turnover was as such also the subject-matter of consideration. In this context, although as has been held in *Commissioner, Sales Tax v. Rama Nand Dwarika Dass Oil Mills S.T.R. No. 119 of*

1958 decided on 30th November, 1962 (Allahabad High Court) no cross-objection could have been filed by the State, we do not think that the Commissioner of Sales Tax was precluded from urging that the order of the Sales Tax Officer was correct, and the enhancement retained by the Assistant Commissioner (Judicial), Sales Tax, in this view could not be knocked off.

7. Although the technical rules of res judicata as contained in the CPC do not apply to proceedings before tribunals other than the civil courts, the general principles of res judicata are of universal application. "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the CPC ; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct" : (see Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another, . This being so, inasmuch as in the earlier revision the question as to whether the turnover returned by the assessee should be accepted or the turnover as fixed by the Sales Tax Officer should be maintained was in issue between the parties, we do not think it was open to the Judge (Revisions) on the revision application filed by the Commissioner of Sales Tax to take a contrary view, and to hold that the turnover fixed by the Sales Tax Officer was correct.

We, therefore, answer the question in the negative, against the department and in favour of the assessee. The assessee is entitled to its costs, which we assess at Rs. 100.