

(1974) 09 AHC CK 0024
In the Allahabad High Court
Case No : Writ Petition No. 2638 of 1974

Jeet Mal Ram Gopal

APPELLANT

Vs

Additional Judge (Revisions), Sales Tax, Aligarh Range

RESPONDENT

Date of Decision : 13-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Uttar Pradesh Sales Tax Act, 1948 — Section 22

Citation : (1975) 36 STC 305

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : K.M.L. Hajela, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This writ petition is directed against an order dated 5th March, 1974, by which the revising authority dismissed an application for rectification filed u/s 22 of the U. P. Sales Tax Act.

2. The applicant is a dealer, inter alia, in deshi ghee and cream. In the assessment year 1964-65 the turnover of cream was not liable to tax. Purchase tax was levied on the turnover of ghee with effect from 1st December, 1964. The assessee in his return disclosed turnovers of purchase of ghee as well as cream. The assessing authority found several discrepancies in the account books and the return and ultimately rejected the account books. The appeal filed by the assessee also failed. The assessee then went up in revision.

3. The revising authority accepted the plea of the assessee that he had in fact purchased cream worth Rs. 9 lacs and odd on behalf of the principals for making ghee. In relation to the turnover of ghee the revising authority found that there was a difference of Rs. 1,80,000 in the returned turnover and that disclosed from the account books of the assessee, and so the version of the account books could not be accepted, but the enhancement in this respect was upheld only to the

extent of Rs. 2 lacs.

4. The assessee made an application for reference. At this stage the revising authority went into the account books, and found that the assessee had been able to reconcile the difference between the return and the account books, and that it appeared that the enhanced turnover mentioned in the return represented the turnover of cream and not of ghee. On this view the revising authority referred the following question of law for the opinion of the High Court:

Whether, on account of mere difference in the taxable turnover of ghee disclosed in the returns and finally shown at the time of the assessment, the turnover of ghee disclosed could be rejected and enhanced to Rs. 5,40,000 ?

5. The High Court upheld the rejection of the account books in respect of the turnover of ghee on the ground that the returned turnover was higher than that disclosed in the account books, and that the burden of proving that there was any mistake in the return was on the assessee and he made no attempt to reconcile the difference between the returned turnover and that disclosed by the account books till the revisional stage. It was held that the findings, if any, recorded at the reference stage were irrelevant for purposes of deciding the reference which must be confined to the findings recorded in the revisional order. In this view this court refused to rely upon the finding that on a perusal of the account books of the assessee it appeared that the excess turnover of ghee mentioned in the return was really the turnover of cream, which was not assessable to tax.

6. Thereafter the assessee moved an application for rectification u/s 22 of the U. P. Sales Tax Act on the ground that there was a mistake apparent on the face of the record. The Judge (Revisions) held that Section 22 applied to a mistake which is apparent on the face of the record and does not call for a detailed investigation of the facts or law, and that in the present case detailed investigation of the accounts was necessary before making the correction ; so the provisions of Section 22 of the U. P. Sales Tax Act were not attracted.

7. Section 22 authorises the assessing, appellate or revising authority to rectify any mistake apparent on the face of the record of assessment, appeal, revision or reference, as the case may be. The record of assessment would generally consist of all documents and material considered in the course of assessment proceedings. The return filed by the assessee and any other material or evidence adduced by him or gathered by the assessing authority in the course of the assessment proceedings would constitute the record of assessment. In the present case the assessee had produced his account books before the assessing authority. It was on a comparison of the return and the account books that the version disclosed by the account books was rejected. The account books would, in our opinion, constitute a part of the record of assessment. The record of assessment would also be a part of the record of appeal and revision. A mistake apparent on the face of such a record is capable of being rectified u/s 22.

8. Section 22 does not specify the nature or character of the mistake beyond saying that it should be apparent on the face of the record. Section 22 does not predicate the nature and extent of the scrutiny that will make the mistake apparent, provided the scrutiny is confined to the record as it is. In the present case, the assessee pleaded that a perusal of the account books would show that there was a clear mistake in the return filed by him. If that be so, it would, in our opinion, be a case of mistake apparent on the face of the record, no matter what may be the nature of the scrutiny that may be required to be made of the contents of the record, namely, the return and the account books.

9. It may be remembered that Order 41, Rule 27, Civil Procedure Code, permits production of additional evidence in appellate courts, and the amendment introduced by the Allahabad High Court provides that the evidence sought to be adduced by a party to the appeal is evidence, which after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made. Similarly, Order 47, Rule 1, Civil Procedure Code, permits review, inter alia, on the ground of discovery of new and important matter or evidence, which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made. Section 22 does not provide for rectification because of discovery of new material. Equally it does not prohibit the rectification of any mistake merely on the ground that such a mistake could have been pointed out in appeal or revision but the assessee failed to do so. It authorises rectification of any mistake if it is apparent on the face of the record. In our opinion, the refusal to rectify should not be based merely on the ground that the alleged mistake could have been pointed out and corrected at the appellate or revisional stage. The account books were produced before the assessing authority, but unfortunately the alleged mistake remained undetected. It is also noticeable that Section 22 is not confined to mistake of law alone ; it extends to mistake of facts as well. If the mistake is evident from the record it is capable of being rectified. In the present case the assessee alleges that a perusal of the account books would bring out the mistake in the return. He reinforces the submission by reference to the finding recorded by the Judge (Revisions) at the reference stage. Under the circumstances the case was prima facie within the purview of Section 22 and the Judge (Revisions) ought to have gone into the merits of the mistake.

10. In the result the petition succeeds and is allowed. The order dated 5th March, 1974, is set aside. The matter is sent back to the revising authority for deciding the application u/s 22 afresh in accordance with law and in the light of the observations made above. The petitioner would be entitled to costs.