(1976) 08 AHC CK 0050

In the Allahabad High Court

Case No : Sales Tax Revision No. 681 of 1973

Krishna Bricks Field APPELLANT

Vs

Sales Tax Commissioner RESPONDENT

Date of Decision : 16-08-1976

Acts Referred:

Citation : (1977) 40 STC 315

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : S.O.P. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Chandrashekhar, J.—The following question has been referred for the opinion of this court by the Additional Judge (Revisions), Sales Tax, Allahabad :

Whether, on the facts and in the circumstances of the case, the survey dated 29th April, 1964, could be used for the assessment pertaining to the year 1962-63 ?

2. The assessee runs a brick kiln manufacturing and selling bricks and allied products. It returned a net turnover for the year in dispute at Rs. 1,24,724.40. In a survey made by the sales tax authorities on 29th April, 1964, a rough copy and a note book were recovered from the assessee and they contained entries for the period from 1st July, 1963, to 26th August, 1963 and from 16th October, 1963, to 29th April, 1964. The assessing authority, relying on the documents recovered in the survey, rejected the account books of the assessee and determined the turnover at Rs. 1,75,000. An appeal filed by the assessee was allowed and the case remanded for reassessment. Dissatisfied with the order of the appellate authority, the assessee filed a revision on the ground that the survey dated 29th April, 1964, did not reveal any material relevant for the year 1962-63 and since no other material for that year came to light, the turnover

returned by the assessee ought to be accepted. The revision was dismissed.

3. Admittedly, the copy and the note book seized at the time of survey did not contain any entry which relates to the assessment year 1962-63.

4. It has been held in Shyam Lal Om Prakash v. Commissioner of Sales Tax, Uttar Pradesh [1972] 29 S.T.C. 385 :

It is not the date of the survey which is material for determining the question as to whether the result of such survey would be relevant for an earlier assessment year, but what is material is the dates and the nature of the suppressed transactions which were discovered as a result of the survey.

5. In the present case, as the survey did not disclose any suppressed transaction for the assessment year 1962-63, it (the survey) could not be made the basis for rejecting the account books of the assessee for that year. The same principle has been laid down in another decision, Umraolal Shiv Ratan Das v. Commissioner of Sales Tax, U. P., Lucknow 1972 U.P.T.C. 726.

6. The sales tax authorities have not referred to any other material to discredit the account books of the assessee. In the circumstances, we are of the opinion that the sales tax authorities erred in rejecting the assessee''s account books only on the basis of the survey dated 29th April, 1964, which did not contain any incriminating material for the year in dispute.

7. In the circumstances, our answer to the question referred to us is as follows :

In the facts and circumstances of the case, the survey dated 29th April, 1964, could not be used for the assessment pertaining to the year 1962-63.

8. The assessee is entitled to his costs which we assess at Rs. 100.

