(1976) 08 AHC CK 0038

In the Allahabad High Court

Case No : S.T.R. No. 681 of 1973

KRISHNA BRICKS FIELD — APPELLANT

Vs

SALES TAX COMMISSIONER. — RESPONDENT

Date of Decision : 16-08-1976

Acts Referred:

Citation : (1977) 6 CTR 24

Hon'ble Judges : R. M. Sahai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. M. Sahai, J. - The following question has been referred for the opinion of this court by the Additional Judge (Revision) Sales Tax, Allahabad.

"Whether on the facts and in the circumstances of the case, the survey dated 29-4-1964 could be used for the assessment pertaining to the year 1962-63".

The assessee runs a brick kiln manufacturing and selling bricks and allied products. It retuned net turnover for the year in dispute at Rs. 1,24,724.40. In a survey made by the Sales Tax authorities on 29.4.1964 a rough copy and a note book were recovered from the assessee and they contained entries for the period from 1st July 1063 to 26th August 1963 and from 16th October 1963 to 29th April 1964. The assessing authority, relying on 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 was remanded for re-assessment. 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.

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

3. It has been held in Shyam Lal Om Parkash vs. Commissioner of Sales Tax, Uttar Pradesh :

"It is not the date of 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 date and the nature of the separate transaction which were discovered as a result of survey."

4. 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 Umrao Shiv Ratan Das vs. Commissioner of Sales Tax, U.P. Lucknow.

5. 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 assessees 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.

6. In the circumstances, our answer to the question referred to us 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."

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