(1978) 09 AHC CK 0001

In the Allahabad High Court

Case No : S.T.R. No. 647 of 1975

Laxmi Stores APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 02-09-1978

Acts Referred:

Citation : (1979) 43 STC 167

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : V.B. Upadhya, for the Appellant; The Standing Counsel, for the Respondent

Judgement

C.S.P. Singh, J.—The Revising Authority, Gorakhpur, has referred -the following two questions for the opinion of this Court:

(1) Whether there was any material for rejecting the assessee''s accounts ?

(2) Whether the assessment of turnover is based on any material ?

2. During the assessment year 1964-65, which is the relevant year for this reference, a survey was held on 31st December, 1964. At that survey it was found that the kachchi rokar was incomplete and had not been written up for 30th and 31st December, 1964. A difference was found in the actual amount of cash available in the till and as shown in the account. The assessee''s explanation was that the difference noticed at the time of survey was in the rokar baki for 29th December, 1964. The Sales Tax Officer examined the rokar and accepted the explanation. The Sales Tax Officer did not draw any adverse inference from the fact that the account books of the assessee were incomplete. For rejecting the accounts, he relied on the decision of the Income Tax Officer, whereby the returned income of the assessee was enhanced. He estimated the turnover after adding an amount of 12.5 per cent on the returned turnover.

3. The assessee filed appeals against the order of the Sales Tax Officer. The

appellate authority found that the assessee had maintained his account books properly ; but maintained the rejection of the accounts on the ground that, during the assessment year 1964-65, the assessee had shown the sale of woollen goods in the category of stitched clothes, although that entry was corrected during the course of the year. The second ground taken was that at the time of the survey during the assessment year 1964-65, the account books of the assessee had not been written up-to-date. A revision was filed by the assessee for the year 1964-65 and another for the year 1965-66. The revising authority disposed of the revisions by a common order. Referring to the survey of 31st December, 1964, which was relevant only for the assessment year 1964-65, he held that inasmuch as the account books had not been written up-to-date, they were not maintained in the regular course of business and, as such, could not be accepted. Apart from this reason, he also relied on the fact that the profits shown by the dealer was very low and has not been accepted by the Income Tax department.

4. One of the reasons given by the Judge (Revisions) that the accounts should not be accepted, as a very low profit was disclosed by the dealer, has not met the approval of this Court in a number of cases. It has been pointed out that low profit without any other defect being found in the accounts is not a sufficient ground for rejection of accounts. However, the other reason given by the Judge (Revisions) that the accounts had not been regularly maintained, affords material for rejecting the accounts. Before accounts of an assessee can be relied upon, the assessee should show that they are regularly maintained and, in absence of this, it would constitute material for rejection of accounts. Thus, the rejection of accounts for the assessment year 1964-65, cannot be said to be based on no material on record. Coming now to the second question, during the assessment year 1964-65, the turnover has been estimated by applying a profit rate of 12.5 percent on the sales made by the assessee. The rate of profit applied by the Sales Tax Officer appears to have been adopted from the order of the Income Tax Officer. Now, in Income Tax assessment, profit rate applied is by reference to the prevailing profit generally earned by assessees in the particular line of business carried on by them. It appears that the assessee had accepted the assessment and had not challenged it by an appeal. This being so, in the circumstances, the Sales Tax Officer could have relied upon the profit rate applied by the Income Tax Officer for estimating the turnover of the assessee. There was as such material on the basis of which the estimate of turnover was made.

5. Both the questions for the assessment year 1964-65 are answered in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, assessed at Rs. 200.

