(1987) 08 AHC CK 0045

In the Allahabad High Court

Case No : Sales Tax Revision No. 808 of 1986

Mahboob Singh Subhash Chand Arhati APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Citation : (1988) 69 STC 229

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : R.C. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—This is a revision filed by the assessee for the assessment year 1981-82 against the Tribunal''s order dated 31st May, 1986.

2. The facts are that the original assessment for the aforesaid year was made by the assessing officer on 16th July, 1983. Thereafter certain entries made in the books of M/s. Mool Chand Multan Singh, commission agent, Baraut, maintained by the assessee were noticed and the proceedings for reassessment were initiated. The assessee filed an explanation before the assessing officer at the stage of reassessment, a certified copy of which has been filed by the assessee. In that explanation dated 25th September, 1985, which was the date of hearing, the assessee clearly stated that M/s. Mool Chand Multan Singh, Baraut, be summoned so that the discrepancies might be explained. The grievance of the assessee is that that despite the aforesaid request, none on behalf of M/s. Mool Chand Multan Singh was summoned by the assessing officer and the reassessment was made without affording any opportunity to the assessee of cross-examining the third party whose books of account were relied on for the purpose of reassessment. The Tribunal observed:

...I find that this plea, that they were not allowed an opportunity to crossexamination, had not been taken by the appellants in the grounds of appeal u/s 9 before the first appellate authority or u/s 10 before this Tribunal. They have simply denied the transactions and in my opinion it was not enough. From the assessment order also I find that no such request was made before the assessing authority as nothing has been discussed by the assessing authority. No evidence has been submitted before me to show that they did ever desire to see the account books seized or to get M/s. Mool Chand Multan Singh cross-examined....

3. It is this portion of the order that has seriously been challenged by the assessee''s counsel in this revision. The submission of Sri Sharma,. learned counsel for the assessee, is that it is fully borne out from the explanation of the assessee that the latter made a specific request for summoning M/s. Mool Chand Multan Singh and bringing on record the books of account so that the entries might be explained. In the face of the explanation submitted to the assessing officer on 25th September, 1985, it is urged that the observation of the Tribunal, that no request was made to the assessing officer is wholly erroneous. In the grounds of appeal filed before the Tribunal as well as before the Assistant Commissioner (Judicial), the assessee clearly stated that he has no connection'' with the firm M/s. Mool Chand Multan Singh. Simply because the assessing officer has not discussed such request of the assessee in the reassessment order and simply because he has not given any reason in the reassessment order to reject such submission of the assessee, the Tribunal was not justified in recording the finding that no request was made by the assessee before the assessing officer for giving an opportunity to examine M/s. Mool Chand Multan Singh, Baraut. The assessee having clearly stated in the explanation dated 25th September, 1985 that the aforesaid party be summoned for examination with the account books, the Tribunal was wrong in making the contrary observation.

4. When the entries made in the books of account of a third party are pressed into service to make reassessment, it is the duty of the assessing officer to afford an opportunity to the assessee on whom the reassessment is sought to be made to examine that party and this could have been made only if the assessing officer had summoned M/s, Mool Chand Multan Singh with the account books, as prayed by the assessee.

5. In the result, the reassessment order is set aside, and the case is sent back to the assessing officer with a direction that he will summon M/s. Mool Chand Multan Singh of Baraut with the account books to enable the assessee to examine the said party and thereafter decide the case afresh. No order as to costs.