(1989) 02 AHC CK 0054

In the Allahabad High Court

Case No : Sales Tax Revision No. 840 of 1987

Moti Lal Krishna Kumar APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Citation : (1990) 79 STC 389

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Partly Allowed

Judgement

Anshuman Singh, J.—This revision u/s 11(1) of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order dated May 6, 1987, passed by the Sales Tax Tribunal, Faizabad Bench Camp, Allahabad, relating to the assessment year 1980-81.

2. The assessee was carrying on the business of kirana, masala, agarbathi, oil-seed, etc., during the assessment year in question. Books of account of the assessee were rejected on the basis of survey dated July 10, 1980, made by the Sales Tax Officer (Mobile Squad) and best judgment assessment was passed. The assessee feeling aggrieved against the assessment order preferred an appeal u/s 9(1) of the Act before the Assistant Commissioner (Judicial), Sales Tax, who by order dated October 22, 1982, allowed the appeal in part and reduced the turnover to Rs. 13,76,899. The assessee as well as the Revenue both feeling aggrieved filed second appeals u/s 10 of the Act before the Tribunal which allowed the appeal of the assessee in pan and rejected that of the Revenue. The Revenue has not come up in revision against the said order but the assessee has challenged the said order in the present revision.

3. I have heard Sri Rakesh Ranjan Agarwal, learned counsel for the applicant,

and Sri V.M. Sahai, learned counsel appearing for the Commissioner of Sales Tax, U.P. Learned counsel for the applicant could not assail the rejection of books of account by the Tribunal but only confined his argument to the estimate of the turnover. He contended that though the Tribunal allowed the appeal of the assessee in part but enhanced the taxable turnover fixed by the Assistant Commissioner (Judicial) while rejecting the appeal of the Revenue. In my opinion, since the Tribunal has rejected the appeal of the Revenue for enhancement of the turnover fixed by the Assistant Commissioner (Judicial), and more so, when the Tribunal allowed the appeal of the assessee in part, it was not open to it to enhance the taxable turnover fixed by the Assistant Commissioner (Judicial). The taxable turnover of the assessee in respect of kirana, masala, etc., was fixed in the first appeal at Rs. 12,00,000 which has been enhanced by the Tribunal while allowing the appeal by Rs. 55,000. The said increase cannot be justified in law and deserves to be deleted from the total turnover of the assessee.

4. Lastly the learned counsel for the applicant contended that though the Tribunal has recorded a finding that in spite of rejection of books of account the turnover disclosed by the assessee regarding tilhan and agarbathi, etc., should not have been increased by the assessing authority but no relief has been granted by the Tribunal. I have carefully perused the order of the Tribunal. It is true that the Tribunal has recorded a categorical finding that the taxable turnover regarding tilhan, agarbathi, etc.. should not have been increased but no relief has been given to the assessee in the operative portion of the order passed by the Tribunal and as such, in my opinion, the turnover disclosed by the assessee regarding tilhan and agarbathi to the tune of Rs. 47,723.56 should have been accepted and the amount enhanced to Rs. 55,000 by the Assistant Commissioner (Judicial) should have been reduced to the said amount.

5. In the result the revision succeeds and is allowed in part The order of the Tribunal to that extent is set aside and it is directed to redetermine the taxable turnover of the assessee in the light of the observation made above. There will be no order as to costs.

6. Let a copy of this order be sent to the Tribunal concerned as contemplated u/s 11(8) of the Act.

