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(1981) 01 AHC CK 0041

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 348 and 349 of 1980

Munna Lal and Sons — APPELLANT

Vs

Commissioner, Sales Tax — RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1982) 49 STC 190

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.R. Rastogi, J.—These two revisions u/s 11(1) of the U.P. Sales Tax Act (hereafter "the Act") have been filed by M/s. Munna Lal and Sons, Amroha, a registered firm (hereafter "the assessee"). The assessment years involved are 1971-72 and 1972-73. The assessee carried on business in manufacture and sale of bricks and ran a brick kiln in village Kuri. It also carried on business in manufacture and sale of sugar and had a crusher in village Bahadurpur. For the aforesaid two years the accounts of the assessee and the disclosed turnover were not accepted by the assessing authority mainly on the basis of survey made on 30th April, 1973, of the assessee''s kiln. According to the department at the time of that survey the assessee''s chowkidar Allahdiya was present and a number of documents relating to the assessment years under consideration were found and after examining them they were given back to Allahdiya. The assessee disputed that in fact any such survey had been made or any such documents had been recovered. According to the assessee Allahdiya was not its chowkidar at the kiln at the time of the alleged survey. Allahdiya had been removed from service in October, 1972, and thereafter Ali Jan was the chowkidar. The assessee filed affidavits both of Allahdiya and Ali Jan in support of this contention. Further the assessee claimed to have transferred this bhatta in February, 1975.

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2. Ali Jan was found to be. the chowkidar at the kiln and his statement was recorded by the survey officer. The assessing authority relying on that statement concluded that at the time of survey made on 30th April, 1973, in fact Allahdiya was the chowkidar and relying on the material recovered .at that time, made best judgment assessments for both these years. It may be noted that the outturn in respect of molasses also was enhanced.

3. The assessee filed appeals against both these assessment orders and once again raised the same contentions. The appellate authority confirmed the assessments and then the assessee filed revisions. The Additional Judge (Revisions) as well confirmed the rejection of accounts. In the matter of quantum of the turnover, however, he gave some relief. The enhancement made in the turnover in respect of molasses was also confirmed.

4. The assessee, being aggrieved, has filed the present revisions. So far as the enhancement made in respect of molasses is concerned, it is concluded by findings of fact and cannot be interfered with. As regards the rejection of accounts and estimate of turnover in respect of kiln business, it was submitted before me on behalf of the assessee that despite there being concurrent findings recorded by the assessing authority and the appellate authority in this behalf, the revising authority being the last fact-finding authority should have examined the assessee''s contentions and recorded its own findings. After hearing counsel I find that there is substance in this contention. The Additional Judge (Revisions) has merely observed that for reasons given in the assessment order and the appellate order the assessee''s accounts have been rightly rejected by the department and turnover determined to the best of judgment. He also repelled the assessee''s contention in regard to the alleged survey for the reasons given by the assessing officer and the appellate authority. He himself did not examine the case with a view to find out as to whether or not the assessee''s contention that in fact there had been no such survey was correct. It may be noted that u/s 10 of the Act, as laid down in Shambhu Ratan Shailendra Kumar v. Commissioner, Sales Tax, U. P. [1972] 30 STC 374(UP), the jurisdiction of the revising authority is "co-extensive with the jurisdiction of the appellate authority. The revising authority is required to entertain, to investigate into and to pronounce upon all questions of fact and law raised before it. The jurisdiction u/s 10, though it is called a revisional jurisdiction, is in fact an appellate jurisdiction, when invoked by the parties, so that even if there is a concurrent findings on a question of fact by the two lower authorities, the revising authority is not precluded from going into and pronouncing upon such a question when raised before it. In fact, it is the duty of the revising authority to decide all questions raised before it".

5. In view of this pronouncement it is clear that it was the duty of the revising authority to decide all questions of fact and law raised before it. The fact that there were concurrent findings recorded on a question of fact by the two lower authorities would not preclude him from going into and pronouncing upon such a

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question itself. Since the revising authority did not do so, the case, in so far as the business of brick kiln is concerned, will have to be remanded for fresh consideration.

6. The revisions are hence allowed in part and the cases for both the years under consideration are remanded to the Sales Tax Tribunal for decision afresh in so far as the business of brick kiln is concerned. In the circumstances, there will be no order as to costs.

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