(2000) 02 AHC CK 0179

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 632, 633, 634 and 635 of 1999

Om Prakash Agarwal APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21

Citation : (2001) 121 STC 558

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Vinod Kumar Agarwal, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—These four revisions arise out of common order passed by the Trade Tax Tribunal, Aligarh, dated June 7, 1999 remanding Second Appeals No. 61, 62, 63 and 64 of 1997 by the revisionist and Second Appeal Nos. 99, 100, 101 and 102 of 1997 by the department. Questions involved in all the revisions are identical, therefore, the revisions are being disposed of by a common judgment.

2. For assessment year 1984-85 original assessment was completed on March 30, 1989 and for the assessment year 1985-86 the original assessment was completed on December 31, 1988. The assessing authority, however, reopened the assessments for both the years u/s 21 on the ground that certain information was received from Sales Tax Officer (S.I.B.) who in his own turn had received informations from the Mandi Samiti which disclosed that certain turnover escaped assessment. After giving the assessee opportunity the assessing authority passed final orders u/s 21 enhancing the admitted tax liability of Rs. 55,153.11 paise to Rs. 5,20,472.50 paise in assessment year 1984-85 (U.P.) and imposed tax liability of Rs. 10,53,000 in assessment year 1984-85 (Central). Similarly for the assessment year 1985-86 also books of account were rejected and the admitted tax liability was enhanced for both the U.P. and Central. The

dealer filed first appeal and thereafter second appeals but was not satisfied by the order passed in the second appeals. The revisionist had, therefore, approached this Court in Trade Tax Revision Nos. 417, 418, 419 and 420 of 1996. This Court by order dated April 18, 1996 disposed of the said revisions upholding the order of remand passed by the Trade Tax Tribunal. The court had however, observed that "there is no doubt that the assessing authority had acted upon adverse information received from Trade Tax Officer (S.I.B.) without calling him for corroboration or proof of information given by him and without his cross-examination by the assessee and also without summoning the record and the Secretary of the Mandi Parishad for cross-examination by the assessee. As such the impugned assessments are illegal and cannot be sustained. The court had further observed that however appellate authority and the learned Tribunal have also quashed illegal assessments taking in view the facts that the information was received from Trade Tax Officer (S.I.B.), they considered it necessary in the interest of revenue that the assessing authority should have made more efforts to have ensured attendance of the Trade Tax Officer, and also the Secretary of the Mandi Parishad and should have also summoned the relevant record of the Mandi Parishad, ...But in case no such adverse material is proved without any shadow of doubt, no assessment can be made relying on that adverse material and account books submitted by the assessee will have to be accepted by the assessing authority for making assessment."

3. After aforesaid order dated April 18, 1996 was passed by this Court the assessing authority summoned the Sales Tax Officer/S.I.B. concerned as well as the Secretary of Mandi Parishad. It appears that the Secretary was required to produce relevant 9 Rs and R 50s. It also appears that time was sought by the Secretary, Mandi Parishad to trace out 9 Rs and R 50s. It, however, appears that the time for assessment after remand was passing out, the assessing authority passed the assessment order u/s 21, dated October 22, 1996 and passed almost the same orders which were passed earlier u/s 21. The first appellate authority allowed the appeals on the ground that the observations of the High Court in the order dated April 18, 1996 have not been complied with and passed remand order. Both the department as well as the assessee felt aggrieved by the remand order passed by the Assistant Commissioner, and the Tribunal by order dated June 7, 1999 dismissed all the appeals and sustained the order of the remand passed by the first appellate authority. Aggrieved by the order of the Tribunal the dealer has filed the aforesaid four revisions.

4. Sri Vinod Kumar Agarwal, learned counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel have been heard. It is submitted by Sri Agarwal that Trade Tax Officer (S.I.B.) had appeared before the assessing authority and had admitted that the information which was received by the Mandi Samiti was recorded in the Register but it was not signed by anybody still the assessing authority acted upon such information which was not proper. It is also submitted that despite sufficient opportunity being given the Secretary of the Mandi Parishad could not produce 9 Rs and R 50s. and it was categorically stated

by him that these documents are preserved for five years and thereafter the same are weeded out. It is submitted that in these circumstances, the remand order passed by the first appellate authority and dismissal of the appeals by the Tribunal was not justified. He submits that there was no compliance of the observation of the court to the effect that unless an adverse material is there, books of account cannot be rejected. His submission is that the Tribunal ought to have decided the appeal on merits after consideration of the material, which was already On record. Sri B.K. Pandey, learned Standing Counsel submits that both the first appellate authority as well as the Tribunal are also fact-finding authorities. They ought to have made efforts to summon the Secretary of the Mandi Parishad and a time bound opportunity ought to have been given to him to produce 9 Rs and R 50s. On expiry of the said period the appeals could have been decided on merit. He also submits that for the assessment year 1984-85 the assessee had not produced any books of account and his explanation was that the books of account were destroyed due to fire. His submission is that in absence of the production of books of account best judgment assessment had to be made.

5. I have gone through the material produced as well as considered the rival arguments. Original assessment orders were passed more than 11-12 years back and thereafter the assessments were reopened. The assessee had to file appeal and then second appeals and had then to approach this Court. Thereafter in view of the remand order passed earlier the assessee had to undergo the same process and ultimately he had to approach this Court again by way of all these revisions. While passing order dated April 18, 1996, this Court has made certain observations, which have been quoted above and had made it quite clear that in case no adverse material is proved without any shadow of doubt, no assessment can be made relying on that adverse material. If after sufficient opportunity the Mandi Samiti authorities were unable to produce 9 Rs and R 50s, then it was not proper to have further remanded the matter. In any case if the Tribunal or the first appellate authority was of the view that the sufficient opportunity was not granted to the Secretary of the Mandi Parishad, then the first appellate authority itself ought to have granted some time and ought to have decided the question of fact whether there is any adverse material or not. It is argued that the entry in the records of the Sales Tax Officer/S.I.B. which is unsigned could not have been relied upon for reassessment. This question also could have been decided by the first appellate authority while deciding the appeal. The order of remand passed by the first appellate authority was, therefore, not proper. As to the question raised by Sri Pandey that for the assessment year 1984-85 the books of. account were not produced, the submission of Sri Agarwal is that the books of account were destroyed in the fire and, therefore, could not be produced. Whether this explanation of the assessee could be accepted or not, could also have been decided by the first appellate authority. In this view of the matter the Tribunal committed error in dismissing the appeals filed by both, the assessee as well as the department. The order of the first appellate authority remanding the

matter for fresh inquiry to the assessing authority was not justified.

6. In view of the discussions made above, all the four revisions are allowed. Order of the Tribunal is set aside. Second appeals filed by the assessee as well as the department are allowed and the order of the first appellate authority is set aside. The first appellate, authority is directed to issue notice to the Secretary, Mandi Samiti granting him three months'' time from the date of receipt of notice, to search out 9 Rs and R 50s and remaining gate pass and produce the same. No further time shall be granted. In case the 9 Rs and R 50s are produced by the Secretary, Mandi Parishad the same shall be examined by the first appellate authority and findings shall be recorded accordingly. In case no document is produced by the Secretary as aforesaid the first appellate authority shall decide the appeals on material which is already on record. The appeals shall be decided by the first appellate authority within three months after expiry of three months period of notice.