**(2007) 04 AHC CK 0283**

**In the Allahabad High Court**

Panchi Petha Store APPELLANT

Vs

The Commissioner, Sales Tax RESPONDENT

**Date of Decision :** 26-04-2007

**Acts Referred:**

Income Tax Act, 1961 — Section 132

**Citation :** (2007) 04 AHC CK 0283

**Hon'ble Judges :** Ashok Bhushan, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Ashok Bhushan, J.—Heard Sri Subham Agarwal holding brief of Sri Piyus Agarwal, learned Counsel for the revisionist and Sri K.M. Sahai, learned Counsel appearing for the respondents.

2. This revision has been filed u/s 11 of the U.P. Sales Tax Act by the assessee against the judgment and order of the Trade Tax Tribunal dated 20th February, 1991 deciding Second Appeal No. 425 of 1988 of the assessee relating to the year 1980-81 for the period 1st April, 1980 to 16th July, 1980.

3. The assessment order was passed on 30th May, 1984 determining the total taxable turnover as Rs. 1,11,200/, imposing tax of Rs. 5,795/-. A notice u/s 10-B of the U.P. Trade Tax Act, 1948 was Issued by the Deputy Commissioner for the purpose of reopening assessment. Reply was submitted by the revisionist on 25th May, 1988 objecting the proceeding. The revisionist pleaded that no proceeding u/s 10-B own be initiated on the basis of the statement dated 24/25th February, 1987 recorded by the Income Tax authorities during the course of search u/s 132 of the Income Tax Act. The Deputy Commissioner passed an order dated 27th May, 1988 determining the turnover of the revisionist as Rs. 5,29,000/-. Aggrieved against the order of Deputy Commissioner an appeal u/s 10 of the Act was filed before the Sales Tax Tribunal, which has been dismissed by the judgment and order dated 20th

February, 1991.

4. Sri Subham Agarwal, learned Counsel for the revisionist. In support of the revision, contended that Deputy Commissioner was not justified in relying on the statement of Subhash Chandra Goyal recorded on 24/25th May, 1987 by the Income Tax authorities for the purpose of revising the assessment order, which was passed in the year 1984. He submits that u/s 10-B, the Deputy Commissioner could have gone into only on the question of legality or propriety of the assessment order on the basis of examination Of record relating to the year and had ho jurisdiction to consider any subsequent material. It is further contended that Deputy Commissioner went beyond the power u/s 10-B in revising the assessment on a material, which could not have been looked into. learned Counsel for the revisionist in support of his submission placed reliance on a judgment of Calcutta High Court reported in 1979 Income Tax Report 447 Ganga Property v. Income Tax Officer and two judgments of this Court in (2005)42 STR 902 Commissioner Trade Tax, U.P. v. Kamal Agencies, Saharanpur and 2006 Tax Cases 1140 Sohan Lal Pooran Mal, Hathras v. Commissioner of Trade Tax.

5. Sri K.M. Sahai, learned Counsel for the respondents has fairly conceded that in view of the judgment reported in 1994 Tax Cases 525 Shyam Lal Om Prakash, Arhatl v. Revising Authority and Ors. u/s 10-B the power can be exercised only to examine the propriety and legality of the order and it is confined to examination of legality or propriety of an order passed by a subordinate authority with reference to material that is available on record as It stood at the time of the order sought to be revised was passed.

6. I have considered the submissions of counsel for the parties and perused the record.

7. Only question, which needs to be considered in this revision is as to whether the order of the Deputy Commissioner, which relied on a subsequent statement recorded by the Income Tax authorities can be made basis for revising the orders of the assessing authority In exercise of power u/s 10-B; Section 10-B(1) of the U.P. Trade Tax Act, 1948, which is relevant for the purpose, is quoted below:

10-B Revision By Commissioner of Sales Tax.

(1) The Commissioner of Sales Tax or such other Officer not below the rank of Deputy Commissioner of Sales Tax as may be authorised In this behalf by the State Government by notification may call for and examine the record relating to any order (other than an order mentioned in 10-A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

8. The power given to the Commissioner u/s 10-B is a power for examining the record relating to any order passed by any officer subordinate to him for the

 

purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto. While exercise the said power the authority can examine as to whether in the facts of the case or the material before the authority the order was justified. The revising authority can also examine the correctness of the order if it had proceeded on some erroneous legal premise or decided a question of law erroneously. Coming to the facts of the present case, suffice it to say that the basis of the order passed by the Deputy Commissioner is statement recorded on 24/25th May, 1987, i.e., subsequent to the assessment order in proceedings under the Income Tax Act. The statement being subsequent in point of time was a material, which was not available with the assessing ^authority when the assessment order was passed. This Court In Shyam Lal Om Prakash''s case (supra), as referred to by Sri K.M. Sahai, has examined the scope of Section 10-B. Following was laid down in paragraph 11 of the said judgment:

11. Section 21 of the Act gives jurisdiction to the Assessing Officer to assess the turnover that has not been assessed during the, year. He can exercise this power if he has reason to believe that, the whole or any part of the turnover of any dealer has escaped assessment or has been under assessed. Such action can be taken within four years. In this case, the limitation for taking action u/s 21 of the Act had, admittedly, expired and it was for this reason that recourse was taken to the powers vested in the Deputy Commissioner u/s 10-B of the Act. However, as is evident from the provisions of Section 10-B, it is not a substitute or alternative for Section 21 The revisional jurisdiction conferred by Section 10-B of the Act is limited, to the examination of legality or propriety of an order passed by a subordinate officer. The legality or propriety of an order passed by such officer has to be tested with reference of the materia that is available on the record or with regard to any commission made by him which as an intellegent Assessing Officer, he should not have made.

9. The same view has been taken by this Court in Commissioner Trade Tax''s case (supra) and in Sohan Lal Pooran Mal''s case (supra). The scope of revising authority under Bengal Finance (Sales Tax) Act, 1941 came for consideration before the Apex Court in Ram Kanai Jamini Ranjan Pal Pvt. Ltd. Vs. Member, Board of Revenue, W. Bengal, The Apex Court was considering the word "revised" as given u/s 20(3) of the said Act. Section 20(3) which came for consideration before the Apex Court, is to the following effect:

20(3). Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules thereunder by a person appointed u/s 3 to assist him, and subject as aforesaid, the Board of Revenue may, in life manner, revise any order passed by the Commissioner:

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be shall consider it and shall record reasons for such rejection:

 

Provided further that no application for revision shall lie to the Commissioner in respect of say assessment if an appeal lies under Sub-section (1) to the Commissioner in respect of such assessment....

10. While interpreting the word "revised" the Apex Court laid down that the scope and ambit of the revisional jurisdiction varies from statute to statute and it is difficult to make general observations in regard thereto. The Apex Court observed that for ascertaining the true scope, content and ambit of the revisional jurisdiction statute is to be looked into. The Apex Court in paragraph 12 of the said judgment also noticed the words "legality or propriety of the order passed or regularity of the proceeding". It was further observed that these words are susceptible of being construed as restricting the revisional power. In that case the Apex Court found that the power of revision was unlimited and cannot be hedged. From the observations made in paragraph 12 of the said judgment, it is clear that the controlling expression of the revising authority is satisfying himself as to the legality or propriety of the order passed, which is susceptible of being construed as restricting the revisional power. The said interpretation has to be applied in the present case since the revisional power u/s 10-B is hedged by the exercise of power in a particular manner. The Apex Court judgment, thus, also lead to same interpretation, which has been taken in the cases as noted above. The judgment relied by counsel for the petitioner in Ganga Property''s case (supra) while dealing, with the revisional jurisdiction of the Commissioner under the Income Tax Act laid down the same proposition.

11. In view of the foregoing discussions, this revision deserves to be and is hereby allowed. The order of the Deputy Commissioner dated 27th May 1988 and the order of the Tribunal dated 20th February, 1991 are set aside.

12. Parties shall bear their own costs.

 