
(1994) 02 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 991 of 1991 Connected with C.M.W.P. No. 1116 of 1991

Paras Palace (Chhabigrih), Varanasi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 21-02-1994

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 38(1)

Citation : (1994) 02 AHC CK 0061

Hon'ble Judges : B. Dikshit, J and B. M. Lal, J

Final Decision : Allowed

Judgement

B. M. Lal, J.—The decision of this writ petition shall also govern and dispose of Civil Misc. Writ Petition No. 1116 of 1991 Sarju Chitra Mandir v, State of U, P. and another.

2. By this writ petition the petitioner seeks a writ in the nature of certiorari quashing the orders dated 1551991 and 1271991 passed by the District Magistrate, Varanasi contained in Annexure 7 and 9, respectively.

3. In short the case of petitioner is that petitioner is carrying on business of exhibition of cinematograph films in the name and style of "Paras Palace (Chhabigrih)" situated in district Varanasi. The petitioner's case is governed under the provisions of U. P. Cinema Regulation Act, 1935 and the Rules framed thereunder. In the instant case the relevant assessment year of tax is 199091 which commence 1st April, 1990 to 31st March, 1991.

4. It is contended that vide notification dated April 27, 1989 which was issued in exercise of powers under subsection (i) of Section 38 of the Uttar Pradesh Entertainments and Betting Tax Act, 1979, the Governor was pleased to make rules with a view to amend the U. P. Entertainments and Betting Tax Rules, 1981 whereby for cinema situated in local area with population not exceeding twenty five thousand the rate of entertainment tax was fixed at 17% of the gross

collection capacity. Accordingly the petitioner has paid the entertainment tax. However, the same was not accepted by the District Magistrate vide its" order dated 1551991 and 1271991 contained in Annexures 7 and 9, respectively, inter alia, on the ground that petitioner should have paid tax at 20% of the gross collection capacity.

5. The learned counsel appearing for petitioner contended that petitioner has paid entertainment tax at the rate of 17% of the gross collection capacity in accordance with the rules and particularly in view of notification issued in the year 1989 referred to above, and thus, the orders passed by the District Magistrate are erroneous.

6. However, the respondents have filed counter affidavit emerging with the plea that the District Magistrate has not committed any mistake or error of law in passing impugned order, and the petitioner is liable to pay entertainment tax at the rate of 20% of the gross collection capacity.

7. Now the point in dispute is very short as to whether the petitioner is liable to pay entertainment tax at the rate of 20% of the gross collection capacity or at the rate of 17% of the gross collection capacity.

8. The petitioner has invited the attention of this Court to Annexure 10. This is a notification issued on 27th March, 1991 enhancing the rate of tax from 17% to 20% of the gross collection capacity with effect from 1st April, 1991. Thus, there is no difficulty that for the financial year 199192 commencing 1st April, 1991 to 31st March, 1992 the tax is to be paid at the rate of 20% of the gross collection capacity by virtue of notification dated 27th March, 1991 but prior to that assessment is to be made in accordance with notification dated April 27, 1989 which fixed the rate of entertainment tax at 17% of the gross collection capacity which the petitioner has paid. Thus, in our considered opinion the petitioner has paid the tax and the demand made by Annexures 7 and 9 dated 1551991 and 1271991 is not in consonance with the notification dated 27th March, 1991 and, therefore, the impugned Annexures 7 and 9 dated 1551991 and 1271991 are hereby quashed.

9. The writ petition is allowed. No order as to costs.