(1963) 04 AHC CK 0011

In the Allahabad High Court

Case No : Misc. Case No. 418 of 1959

Qamruddin APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 15-04-1963

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(4), 11(6)

Citation : (1963) 14 STC 534

Hon'ble Judges : M.C. Desai, C.J;K.B. Asthana, J

Bench : Division Bench

Advocate : D. Sanyal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, C.J.—This is a statement of case submitted to this Court by the Judge (Revisions) u/s 11(4) of the U.P. Sales Tax Act at the instance of an assessee. The question formulated by the Judge (Revisions) is as follows:-

Whether in the circumstances of the case the Sales Tax Officer was legally right in making the assessment without issuing a notice to the assessee.

2. The assessee is a dealer; it did not submit any return for the very first assessment year 1948-49 of its turnover for the previous year 1947-48 within the prescribed time. After the lapse of the prescribed time the Sales Tax Officer started proceedings u/s 7(3) and made the best judgment assessment of its turnover on 15th January, 1949, without issuing any notice to it. It filed an appeal against the assessment order on the ground that it was not served with a notice for appearance during Section 7(3) proceedings. The appeal failed and an application in revision also failed. It applied to the Judge for referring the question of the validity of the assessment order passed without issuing a notice, to this Court but the application was dismissed. Then this Court ordered the Judge (Revisions) to state the case.

3. The law is that it is the duty of an assessee himself to submit a return of his

turnover of the previous year within sixty days of the commencement of the assessment year in the prescribed form, vide Section 7(1). If he submits a return the assessing authority may accept it as correct and complete the assessment. If he does not accept it as correct and complete and finds it incomplete or incorrect he is empowered by Sub-section (3) to make the best judgment assessment after such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of proving the correctness or completeness of the return. So if a return has been filed by an assessee the assessing authority cannot reject it without giving the assessee a reasonable opportunity of proving its correctness or completeness. If the assessee fails to avail himself of the reasonable opportunity and does not succeed in proving the correctness or completeness of the return the assessing authority is competent to make the best judgment assessment after such enquiry as he considers necessary. For this latter proceeding he is only required to make such enquiry as he himself considers necessary; he is not required to give (another) notice to the assessee. The very fact that a notice is expressly required to be given to an assessee only to enable him to prove the correctness or completeness of the return and the absence of the provision for a notice to be given during the best judgment assessment show that no notice is required to be given for the best judgment assessment. This was the view taken by a Bench of this Court in Adarsh Bhandar v. Sales Tax Officer, Aligarh [1957] 8 S.T.C. 666 Mootham, C.J., observed that after an assessee fails to prove the correctness or completeness of the return he drops out of the picture and that the assessing authority is competent to make the best judgment assessment on the basis of any enquiry that he considers necessary. If an assessee has not filed any return then the position is exactly the same as if he had filed a return which had not been accepted by the assessing authority as correct or complete and he had failed to prove that it was complete and correct in spite of a reasonable opportunity having been given to he in, under Sub-section (3) there is no distinction between an assessee who has not filed a return and an assessee who has failed to prove in spite of a reasonable opportunity that the return filed by him was correct and complete. In both cases the assessing authority gets the right to make the best judgment assessment after making such enquiry as he considers necessary. If in one case it is not obligatory upon him to give notice to the assessee it is not obligatory for him to give notice in the other case also.

4. No question of violation of principles of natural justice arises because the provision of Sub-section (3) suggests that no notice is required to be given during the proceeding for the best judgment assessment. Further, a best judgment proceeding becomes necessary only on account of the assessee''s own default in submitting a return or in submitting a correct and complete return. Principles of natural justice are fully met when before an assessment order is passed the assessee is given an opportunity to submit a complete and correct return and to prove that the return submitted by him is complete and correct. If he fails to avail himself of this opportunity it is his own fault and he cannot now

be heard to say that in spite of his failure no best judgment assessment can be made. It is not necessary to give him any further notice. Whatever he could do if he were given a further notice could and should have been done by him at the proper time.

5. Our answer to the. question is in the affirmative.

6. We direct that the copies of this judgment shall be sent to the Judge (Revisions) Sales Tax, U.P., and the Commissioner of Sales Tax, U.P., under the signature of the Registrar and seal of the Court as required by Section 11(6) of the U.P. Sales Tax Act.

7. We further direct that the assessee shall pay Rs. 100 as costs of this reference to the Commissioner, Sales Tax, U.P. Counsel''s fee is assessed at 100.