(1977) 04 AHC CK 0018

In the Allahabad High Court

Case No : Sales Tax Reference No. 429 of 1973

Ramji Mal Govind Ram — APPELLANT

Vs

Commissioner, Sales Tax — RESPONDENT

Date of Decision : 06-04-1977

Acts Referred:

Citation : (1977) 40 STC 200

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : J.C. Bhardwaj, for the Appellant; Standing Counsel, for the Respondent

Judgement

D.M. Chandrashekhar, J.—The following question has been referred for opinion of this court:

Whether, on the facts and circumstances of the case, there was any material in support of the turnover assessed by the Judge (Revisions) ?

2. It is not necessary to give the facts in detail. Suffice it to say that the assessee''s account books have been rejected by the revising authority and it has not been challenged by the assessee.

3. It has been alleged by the counsel for the assessee that the revising authority has committed an error of law inasmuch as the turnover has been fixed without adverting to any material on record.

4. The principles governing best judgment assessment have been settled by a series of decisions by the Supreme Court. In estimating the turnover in a best judgment assessment, an element of guess-work is inevitable. However, (he courts have held that in making a best judgment assessment the assessing authority should not be arbitrary, capricious or vindictive.

5. No doubt, the revising authority in this case has not referred to any specific material which formed the basis for arriving at the figure fixed by it. But in the

statement of the case submitted to this court the turnover of the assessee for the earlier year, the survey of his premises and the rejection of the explanation given by him have been mentioned. Admittedly, the assessee disclosed a turnover of more than Rs. 5 lacs. On the basis of these facts the Judge (Revisions) fixed the turnover at Rs. 6 lacs, While fixing the turnover, it appears from his order, he took these facts into consideration. It cannot be said in the circumstances that the fixation of turnover was without any material on the record. It would have been better if the Judge (Revisions) had disclosed the aforesaid materials in the order itself. But, if those materials were on record and had been considered by him, we cannot say that the fixation of the turnover was without any material on record.

6. For the reasons stated above, we answer the reference in the affirmative, against the assessee and in favour of the department. Our answer is as follows;

On the facts and circumstances of the case, there was material in support of the turnover assessed by the Judge (Revisions).

7. We, however, direct the parties to bear their own costs in this reference.