

(1975) 08 AHC CK 0031

In the Allahabad High Court

Case No : S.T.R. Miscellaneous No. 697 of 1973

Sahibuddin and Sons

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 04-08-1975

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 12

Citation : (1976) 38 STC 47

Hon'ble Judges : K.B. Asthana, C.J;R.L. Gulati, J

Bench : Division Bench

Advocate : Rajesh Tandon and S.N. Tandon, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—This is a reference u/s 11(1) of the U. P. Sales Tax Act.

2. The assessee is a dealer in dry fruits, ice and fireworks. His return for the assessment year 1967-68 disclosing a turnover of Rs. 90,570.29 was not accepted by the Sales Tax Officer, even though in support of the return he produced his account books consisting of rokar, khata, purchase voucher and form C register. The Sales Tax Officer enhanced the turnover to Rs. 1,40,000 which, however, was reduced in appeal to Rs. 1,20,000 by the Assistant Commissioner (Judicial). The revising authority has also not accepted the account books and has confirmed the estimate of the turnover. For rejecting the account books, the revising authority has relied upon the following two circumstances :

(i) That the assessee records his sales after counting the till.

(ii) that in the preceding year also his account books were rejected and the sale was enhanced.

3. Aggrieved, the assessee asked for a reference and the revising authority has

submitted this statement of the case with the following two questions for the opinion of this court:

(i) Whether the account books of the dealer for the year 1967-68 could be rejected because he used to record his daily sales at the end of the day's transactions after counting the cash in the till ?

(ii) Whether the dealer's books of account could be rejected for the year 1967-68 on the ground that his books of account had been rejected during the previous year?

4. Ordinarily, cash sales must be vouched by cash memos or by contemporaneous entries in the cash book so that the sales can be easily verified. But, in the case of petty dealers, this system may not be practicable and the only method adopted for the recording of sale is to count cash daily at the end of the day and to find out the sale after making necessary adjustment for expenses and outgoings. This, no doubt, is a crude system of account-keeping, but it is a recognised system, and if there are no other circumstances suggesting the suppression of sales, the system has got to be accepted. This view finds support from a decision of this court in *Vishwanath Prasad Munnoo Lai v. Commissioner of Sales Tax U.P.* Sales Tax Reference No. 356 of 1969 decided on 23rd February, 1970 (Allahabad High Court).

5. Now, in the instant case, the revising authority has taken the view that because the assessee records his sales after counting the till at the end of the day, this ground is sufficient to justify the rejection of account books. This is not a correct view. The manner of recording the sales by counting the cash in the till by itself is not enough to warrant the rejection of the account books. The fact that in the preceding year also the account books of the assessee were rejected on the same ground is not a relevant consideration. The principles of *res judicata* do not apply to assessment proceedings under the U. P. Sales Tax Act. Every assessment year is a self-contained unit of assessment and the findings have to be recorded on the material relevant to that year. If the sales tax authorities have taken an erroneous view in an earlier year, the assessee will not be precluded from contending in the subsequent year that on a correct view of the law the account books of the assessee should not be rejected on the ground merely that his cash sales were not supported by cash memos, but were recorded on the basis of the cash in the till.

6. Section 12 of the U. P. Sales Tax Act contains a direction as to how the accounts should be maintained. It provides that every dealer shall keep and maintain a true and correct account showing the value of the goods sold and bought by him and, in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf. Rule 72 of the U. P. Sales Tax Rules similarly provides that every dealer shall maintain a true and correct account of all his purchases, sales and stocks showing quantity and value

for verification of the accuracy of his turnover. It is further provided that a manufacturer liable to pay tax under the Act shall maintain a stock book in respect of raw materials as well as products at the various points of production.

7. Now, in the instant case, it has not been held that the accounts of the assessee do not show the value of the goods sold and bought or that the accounts maintained in the ordinary course of business are not in an intelligible form. There is also no finding that the assessee did not maintain a true and correct account of his purchases as well as of stock showing quantity and value for verification of the accuracy of his turnover. In the absence of these findings, neither Section 12 nor Rule 72 seem to have been contravened by the assessee. The statutory provisions or the Rules do not provide that cash sales must always be vouched by cash memos or by contemporaneous entries in the cash book. Method of account-keeping is left to the choice of the assessee and, so long as the method adopted by the assessee is a recognised method of account-keeping, his account books cannot be rejected.

8. For all these reasons, we answer both the questions in the negative in favour of the assessee and against the department. The assessee is entitled to the costs which we assess at Rs. 100.