
(1972) 02 AHC CK 0015

In the Allahabad High Court

Case No : Sales Tax Reference No. 699 of 1970

Shambhu Ratan Shailendra Kumar

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 02-02-1972

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(4)

Citation : (1973) 30 STC 374

Hon'ble Judges : S.N. Dwivedi, J; R.L. Gulati, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bhartji Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Judgement

R.L. Gulati, J.—In compliance with the order of this court dated 17th March, 1970, u/s 11(4) of the U.P. Sales Tax Act, the Judge (Revisions), Sales Tax, Lucknow, has submitted this statement of the case on the following two questions of law :

(1) Whether there was any material for rejecting the account books of the assessee ?

(2) Whether the method employed in determining the quantum of turnover was legally permissible ?

2. The assessee carries on business in chemicals. The assessment year involved is 1962-63. The assessee filed its turnover for that year and declared a gross turnover at Rs. 1,19,170.60. The account books produced by the assessee were rejected by the assessing authority which made a best judgment assessment determining the net turnover at Rs. 2,40,000. The assessee objected to the rejection of the accounts as also to the quantum of the turnover assessed. The appellate authority reduced the net turnover to Rs. 2,25,000, but did not accept the assessee's contention with regard to the account books. The same was the fate of the assessee before the revising authority. The revising authority reduced

the turnover further to a sum of Rs. 2,08,000.

3. The assessee's contention is that its books of account had been maintained in a regular and- proper manner and no discrepancies having been found in the account books, the same should have been accepted. The alternative contention of the assessee is that the method of computing the turnover as adopted by the sales tax authorities is erroneous.

4. The revising authority has declined to go into the contention of the assessee relating to the account books on the ground that there being a concurrent finding on that point by the assessing and the appellate authorities, the revising authority could not interfere unless the finding of the lower authorities was improper or perverse. This is not the first time that we have come across a situation like this. In a large number of cases the revising authority refuses to interfere with the findings of fact recorded by the lower authorities on similar grounds. We must emphasise once again, as we have done on previous occasions, that the jurisdiction of the revising authority u/s 10 of the Act is co-extensive with the jurisdiction of the appellate authority. The revising authority is required to entertain, to investigate into and to pronounce upon all questions of fact and law raised before it. The jurisdiction u/s 10, though it is called a revisional jurisdiction, is in fact an appellate jurisdiction, when invoked by the parties, so that even if there is a concurrent finding on a question of fact by the two lower authorities, the revising authority is not precluded from going into and pronouncing upon such a question when raised before it. In fact, it is the duty of the revising authority to decide all questions raised before it.

5. However, we do not propose to decide this reference on this aspect alone. We have perused the orders of the appellate as well as the assessing authority to find out if there was any cogent reason contained in those orders for rejecting the assessee's account books. We are constrained to say that we have found none. The only ground which prevailed with those authorities was that the turnover of the assessee appeared to be inadequate. That by itself is not a ground for rejecting the assessee's account books. When the assessee's turnover appears to be inadequate, it might give an indication to the assessing authority that the turnover may not have been correctly recorded in the account books. In such an event the assessing authority is expected to go deeper into the account books and to find out some positive arid concrete material showing the understatement of the turnover. But in the absence of any positive material, the account books cannot be rejected merely on the ground that they do not disclose adequate turnover. Fall in the turnover may be due to several reasons and not necessarily due to suppression of sales. Accordingly, it is essential in such a case that some positive material should be brought on record justifying the rejection of the assessee's account books. In the instant case, no positive material has been placed on the record which can be said to be sufficient for rejecting the assessee's account books. We, accordingly, answer the first question in the negative.

6. In view of our answer, to question No. (1), it is not necessary to answer the second question. The assessee is entitled to its costs which we assess at Rs. 100.