(2012) 05 AHC CK 0006

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 232 and 233 of 2004

Singh Gramodyog Int Bhatta — APPELLANT

Vs

Commissioner, Trade Tax, Lucknow — RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (2012) 55 VST 185

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : M.M. Dewan, for the Appellant;

Judgement

Dr. Satish Chandra, J.—Both the revisions u/s 11(1) of the U.P. Trade Tax Act, 1948 have been preferred against the judgment and order dated February 13, 2004 passed by the Trade Tax Tribunal Lucknow in Second Appeals Nos. 108 and 107 of 1998, for the assessment years 1994-95 and 1995-96. The brief facts of the cases are that the revisionist is a partnership firm, running a brick kiln for manufacture and sale of bricks at Bhudaria (Hardoi). A survey was conducted at the business premises of the revisionist on June 20, 1995. The muneem (accountant) was found at the spot but complete books of account were not available. Whatever material pertaining to the accounts was available, the same was seized. It was also found that firing was going on in the brick kiln but no stock of the finished bricks was available.

2. In these circumstances, the assessing officer has rejected the books of account and made the assessment ex parte as the revisionist could not participate in the proceedings before him. From the orders of the assessing officer, it appears that he has estimated the firing period and made the addition on estimate basis.

3. In the first appeal, the first appellate authority has again estimated the sale, consumption of coal, firing period, etc., and gave a partial relief to the assessee

by reducing the addition. Not being satisfied, the revisionist has filed the second appeal for both the assessment years before the Tribunal, which upheld the orders of the first appellate authority and dismissed both the appeals. Being aggrieved, the revisionist has filed the present revisions.

4. With this background, Sri M.M. Dewan, learned counsel for the revisionist submits that the revisionist was availing of the benefit of the compounding scheme. In the previous assessment years, orders were passed u/s 7D of the Act but during the assessment year under consideration, the same facility was not provided to the revisionist. However, he admits that the survey was conducted before filing the return. He also submits that before the assessing officer, the assessee could not attend the proceedings due to his illness.

5. According to the learned counsel for the revisionist, the assessing officer has not given the benefit of temporary closure of the firing period. For this purpose, he has relied on the ratio laid down in the cases of Chawla Brick Field v. Commissioner of Sales Tax (1987) UPTC 1377, Om Prakash Vishnoi v. Commissioner of Sales Tax (1981) UPTC 35 and Ram Dev Gupta v. Commissioner of Sales Tax (1981) ATJ 151, where it was observed that there is no requirement in the Act that the brick manufacturer shall intimate the period or periods during which he shall operate the kiln and that it was for the Department to make survey and ascertain whether the kiln operated for the period in question or not. He also agitated that the lower authorities were not justified in enhancing the selling rate of the bricks shown by the revisionist since these are duly supported by regular challans/bills. For this purpose, he has relied on the ratio of this honourable High Court in the case of Khandelwal Agency v. C. S. T. (1987) UPTC 640 (All). Lastly, he made a request that the addition may kindly be deleted.

6. On the other hand, learned standing counsel has supported the impugned order. He further submits that at the time of survey, complete books of account were not found. The first appellate authority has already given a substantial relief to the revisionist and there is no scope to give any further relief.

7. After hearing both the parties, it appears that on June 20, 1995, a survey was conducted at the business premises of the assessee, though the muneem (accountant) was available at the site no complete books of account were available. It also found that firing in the brick kiln was continued and about five lakh raw bricks were available, but there was no stock of finished goods.

8. In these circumstances, the assessing officer has made the addition on estimate basis by taking into consideration the consumption of coal, firing period, sale of the bricks, etc. The revisionist has not participated in the assessment proceedings before the assessing officer. So, the assessing officer made the addition on estimate basis but the fact remains that in the appeal proceedings, the revisionist has voluntarily participated. When it is so, the principles of natural justice has not been violated as per the ratio laid down in the case of K.J. Thomas Vs. Commissioner of Income Tax, .

9. In the instant case, the assessing officer made the addition on estimate basis and the Commissioner (Appeals) has reduced the addition on estimate basis, which was upheld by the Tribunal.

10. Needless to mention that estimation is a question of fact as per the ratio laid down in a catena of judgments including :

(1) Biraj Kavar Galada, rep. by her L/R M.C. Galada and

(2) Sanjay Oilcake Industries Vs. Commissioner of Income Tax, .

11. In view of the well-settled legal position, it is clear that no question of law is emerging from the impugned order. Hence, no interference is required in the impugned order which is hereby sustained along with the reasons mentioned therein, The interim order, if any, is discharged. In the result, both the revisions filed by the assessee have no merit and the same are accordingly dismissed.

