(2013) 05 AHC CK 0081

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 314 of 2007

Sri Krishna Steel Works APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : (2014) 70 VST 309

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Judgement

Pankaj Mithal, J.—Heard Sri Shubham Agrawal, learned counsel for the assessee-revisionist and Sri U.K. Pandey, learned standing counsel for the Department. This revision filed by the assessee relates to the assessment year 2004-05. The assessee is manufacturing and dealing in steel almirah and coolers, etc. The books of account of the assessee for the relevant year were rejected on the basis of the survey dated April 21, 2005 and the best judgment assessment was made. The first appellate authority reduced the taxable turnover assessed by the assessing authority. Against the order of the first appellate authority, both the parties went in appeal to the Tribunal. The appeal of the Department was dismissed and that of the assessee was partly allowed and the taxable turnover was further reduced vide order dated January 29, 2007.

2. Against the aforesaid order of the Tribunal, this revision has been preferred.

3. Sri Shubham Agrawal, learned counsel for the revisionist, has argued that rejection of the account books of the assessee on the basis of survey dated April 21, 2005, is not proper.

4. In view of the above, the only question, which requires consideration in this revision, is whether the authorities were justified in rejecting the account books of the assessee for the assessment year 2004-05 on the basis of survey dated April 21, 2005 and to make best judgment assessment.

5. There is no dispute that the survey at the business premises of the assessee was conducted on April 21, 2005. During the survey stock worth Rs. 65,000 was found. The assessing authority taking the above stock as base, assessed the taxable turnover for the assessment year 2004-05, which has been reduced partly by the first appellate authority and further by the Tribunal. The Tribunal in dismissing the appeal of the Department has recorded a finding that as the survey was not done in the relevant year, it cannot be made the basis for assessment. Once the Tribunal has returned the above findings, it was not open for it to have upheld even the rejection of account books of the assessee on the basis of survey conducted subsequent to the relevant year. No other material on the basis of which the account books could be rejected was available before the authorities.

6. Apart from the above, the statement of the brother of proprietor of the assessee recorded during survey that the business was being conducted for the last six months could not have been accepted by the authorities ignoring the affidavit of the proprietor dated September 22, 2005 wherein he has categorically stated that no business or transaction during the assessment year 2004-05 was done meaning thereby the business was started in the assessment year 2005-06.

7. It has been held by this court in Manoj Sweet House v. Commissioner of Trade Tax (2004) STI Alld. H.C. 800 that the survey made during the subsequent year in the absence of any other relevant material is of no use for assessing the taxable turnover.

8. A similar view has also been taken by this court in Ganga Kerana Stores v. Commissioner, Trade Tax (2005) UPTC 1068. In the said case also, there was no other material except the survey to show that the assessee was carrying on business in the relevant assessment year. The court held that in such circumstances as the survey relates to the subsequent period there was no taxable turnover in the concerned year.

9. In view of the aforesaid facts and circumstances and the legal position which emerges from the above, as apparently there was no other material before the authorities, which could demonstrate that the assessee had conducted any business during the relevant assessment year 2004-05, there was no justification for rejecting the account books and in making the best judgment assessment on the basis of stock found during survey dated April 21, 2005.

10. In addition to the above, it is also well-settled that best judgment assessment cannot be made in an arbitrary manner on the basis of conjectures and surmises. There has to be some material to support such an assessment. A reference in this regard may be had to the decision of this court in case of Om Prakash Sharma v. Commissioner of Trade Tax (2009) UPTC 578 wherein it has been very clearly ruled that the best judgment assessment cannot be made on assumption and presumption inasmuch as assumption and suspicion cannot be

regarded as part of the evidence.

11. In view of the above, the question raised above, is answered in favour of the assessee and against the Department and it is held that the authorities were not justified either in rejecting the accounts of the assessee or in making best judgment assessment for the assessment year 2004-05 on the basis of the survey dated April 21, 2005 in the absence of any other material on record to prove that the assessee had actually carried any business in the relevant year. The impugned orders of assessment are set aside and the revision is allowed.