

Neutral Citation No. - 2023:AHC:219954

Reserved

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 106 of 2023

Revisionist :- M/S Sri Shanti Readymade

Opposite Party :- The Commissioner, Commercial Taxes, U.P.

Counsel for Revisionist :- Sanyukta Singh

Counsel for Opposite Party :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Ms. Sanyukta Singh for the revisionist and Mr. B.K. Pandey, learned Additional Chief Standing Counsel for the opposite party.
2. The present revision has been filed against the judgement and order dated 16.5.2023 passed by Commercial Tax Tribunal in Second Appeal No. 45 of 2022 (A.Y. 2014-15) passed in the proceedings under Section 28 (2) (ii) of UP VAT Act.
3. The present revision has been admitted vide order dated 10.8.2023 on the following questions of law: -

“(A) Whether the Tribunal was justified in rejecting the account books and affirming the best judgement assessment, even after recording the finding in favour of the applicant that assessing authority and the first appellate authority has not given any basis of fixing the turnover and the best judgement assessment should not be whimsical, else it would be illegal?”

B. Whether the tribunal was justified in only partially allowing the appeal filed by the applicant and estimating the turnover of undisclosed sale at Rs. 57.50 Lakh merely on the basis of alleged entry of sale of Rs. 1.10 lakh found to be recorded in the documents seized during the survey, which does not relate to the applicant and which relates to the period prior to the commencement of business of the applicant?

C. Whether the tribunal was justified in assessing the undisclosed purchase of cloth and tailoring material and also assessing undisclosed sale of stitched cloth without giving benefit of ITC and

when the applicant was only engaged in the business of trading of readymade cloth and no stock of unstitched cloth or tailoring material was found during the survey?

D. Whether the tribunal was justified in fixing huge amount of undisclosed purchase and sales of Rs. 26.62 lacs and 57.50 lacs respectively, merely on the basis of surmises and conjunctures, in the absence of any adverse material available on record and in the absence of any solitary instance of seizure of the goods relating to applicant for assessment year in dispute?”

4. Learned counsel for the revisionist has submitted that the applicant is a registered dealer under the UP VAT Act (hereinafter referred to as the ‘Act’) and engaged in trading of ready-made garments and his business was commenced from Assessment Year 2014-15. She submitted that on 27.9.2014 a survey was conducted in the business premisses of the revisionist and at the time of survey, the revisionist was not present at the spot. She submitted that at the time of survey business of the applicant was closed but the shop was opened for carpentry work. It was submitted that during spot inspection, six loose documents were found which were relating to the transactions of previous assessment year when the revisionist was not in possession of the shop in question and same was being used by the erstwhile tenant.

5. She further submitted that Sanket no. 1 as well as 3 which was duly verified from the books of account and Sanket no. 2 relates to sale of period from 20.9.2014 to 26.9.2014 of which sale invoice no. 12/574 of Rs. 761/- only and was signed by the SIB authorities. She further submitted that Sanket No. 3 to 6 were not related to assessment in question and belonged to the period prior to commencement of business of the revisionist and the entries were belonging to stitching of garments which was not related to the business of the revisionist. She further submitted that revisionist was only engaged in the business of trading of readymade garment; there was no material being found at the time of survey which indicate that the revisionist was doing the business of stitching of cloth or manufacturing of readymade garments.

6. She submitted that in pursuance of said survey, the assessment order was passed on 23.2.2018 rejecting the books of account of the revisionist and

enhancing the turnover against which an appeal has been preferred by the revisionist which was partly allowed by the order dated 22.4.2018 to the extent that the first appellate authority has reduced the tax liability by Rs. 1,30,800/-, thereafter the revisionist has challenged the said order before the Tribunal who by the impugned order dated 16.5.2023 has partly allowed the appeal and affirmed total tax liability upon the application of Rs. 4,19,600/-. She submitted that after recording the finding in favour of the revisionist, the appeal has been partly allowed. She further submitted that only on the basis of survey dated 27.9.2014, the enhancement has been made however merely the books of account was liable to be rejected and it would be not necessary to led the conclusion that the assessee had entered into the transaction which may be enhanced to the turnover. She prays for allowing the present revision.

7. *Per contra*, learned A.C.S.C. has supported the impugned order and submitted that at the time of survey, some loose papers were found on the basis of which the books of accounts has been rejected and enhancement has rightly been made which substantially has not been reduced by the appellate authorities, therefore, there is no good ground for interference of this Court as the revisionist could not controvert the genuineness of the documents seized by the authorities. He prays for dismissal of the present revision.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. Admittedly, the assessment year in question was the first year of business of the revisionist. The survey of the business premisses of the revisionist was conducted on 27.9.2014 and at the time of survey the proprietor of the firm was not available. It is also admitted that at the time of survey six loose papers were found which have been duly explained by the revisionist and on the basis of said survey as well as documents seized by the authorities, the books of account of the revisionist has been rejected and enhancement of turnover has been made. The revisionist has submitted that Sanket no. 1 was only in respect of sale of Rs. 1,09,605/- and recorded for a period of 1.1.2013 to 20.6.2014 and sale of only Rs. 761/- was found to be recorded on 24.9.2014, which has been explained by

the revisionist however on the basis of which the best judgement assessment has been made and has been confirmed up to the stage of Tribunal.

10. Further an explanation was submitted by the revisionist with regard to the entries made in Sanket No. 2 which is related to the period from 20.9.2014 to 26.9.2014 and said document was related the period prior to assessment year question as the dispute is with regard to A.Y. 2014-15. From the said entry an inference has been drawn that the revisionist is entered into the business of stitching of cloth whereas he was only granted registration for trading the readymade garments. The revisionist has further submitted his reply which was not disbelieved by the authorities as no finding contrary to the same has been recorded by any of the authority. The tribunal being the last court of fact has recorded categorical finding in favour of the revisionist in para 12 of the judgement, which is quoted hereunder:-

“12.पत्रावली के अवलोकन से स्पष्ट है की कर निर्धारण अधिकारी एवं विद्वान प्रथम अपीलीय अधिकारी द्वारा अपवांचित टर्न ओवर निर्धारित किये जाने का कोई समुचित आधार नहीं लिया गया है। ऐसे में विद्वान प्रथम अपीलीय अधिकारी द्वारा पारित आदेश का समर्थन नहीं किया जा सकता है। ”

11. From perusal of the aforesaid finding recorded by the Tribunal, it is evident that the Tribunal being the last court of fact has recorded a finding that authorities have not given any substantial reason for enhancing the turnover. On the said finding, the books of account can be rejected but it is not necessary to enhance the turnover.

12. This Court in the case of **M/s Delight Engineering Company Vs. CST, 1981 UPTC page 959** has held that the it is not necessary to enhance the turnover after rejecting the account books.

13. Again this Court in the case of **M/s Ratan Hari Rolling Mills Ltd. Vs. CTT, 2007 UPTC page 959** as well as **Ram Products Private Limited Vs. CCT, 2015 UPTC 1194** have categorically held that estimate for whole year is not justified when suppression was found in a particular period.

14. This Court in the case of **M/s Krishna Gramodyog Samiti Vs. C.C.T. 2013 (17) VSTI page 591** has held that best judgement assessment cannot be made in an arbitrary manner simply on the basis of surmises and conjunctures, unless there is some material to support such an assessment.

15. Further this Court in the case of **Devi Dayal Aluminium Industries Vs. CTT, 2008 UPTC page 1306** has held that while estimating turnover, the order should provide some basis otherwise the order would be arbitrary.

16. Again this Court in the case of **Shyam Sugar Industries Vs. CST, reported in 2001 UPTC page 797** has held that in the absence of any material pointing out that the applicant has indulged in suppression and concealment of sales and purchases, the books of accounts and disclosed turnover of the applicant could not have been rejected.

17. Once the findings of fact has been recorded in favour of the petitioner, there is no cogent reason for enhancing the turnover. The tribunal was not justified in confirming the enhancement of turnover in view of the fact that at the time of survey loose papers were found which have been explained by the revisionist and merely on that ground the books of account can be rejected but enhancement should not be made.

18. In view of above, the revision is **partly allowed** and the order of the tribunal is modified to the extent that taxable turnover of the revisionist relating to the assessment year in question, is hereby accepted.

19. The substantial questions of law are answered accordingly.

Order Date :-20.11.2023

Rahul Dwivedi/-