

Panchhi Petha Stores Vs The Commissioner Sales Tax

Court: Allahabad High Court

Date of Decision: April 26, 2007

Acts Referred: Income Tax Act, 1961 " Section 132, 147, 148

Hon'ble Judges: Ashok Bhushan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

Heard Sri Subham Agarwal holding brief of Sri Piyus Agarwal, learned Counsel for the revisionist and Sri U.K.

Pandey, learned Counsel appearing for the respondents.

2. Both the above revisions involve similar question of law and facts, hence the same are being decided by this common judgment. The facts of

Revision No. 965 of 1991 is being noted for deciding both the revisions.

3. This revision has been filed u/s 11 of the UP. Sales Tax Act against the order dated 22th April, 1991 by which order two appeals filed by the

revisionist relating to the assessment year 1982-83 and 1983-84 have been dismissed.

4. Brief facts necessary for deciding the controversy raised in this revision are; assessment orders with regard to years in question were passed on

25th May, 1984 and 28th January, 1984. After passing of the assessment order, the assessing authority came to know about the statement made

by Kanhaiya Lal, the partner of the firm on 24th February, 1987 at the time of income tax search u/s 132 of the Income Tax Act. In the said

statement Kanhaiya Lal stated that daily sale was between Rs. 30007- to 4,500/- of the firm in the relevant years. After being satisfied certain tax

has escaped assessment, proceeding u/s 21 of the Trade Tax Act were initiated by the assessing authority. An order was passed of reassessment

u/s 21 of the U.P. Trade Tax Act on 16th September, 1987 reassessing the tax liability. Consequently, demand was issued accordingly. Appeals

were filed by the assessee against the reassessment order, which appeals were allowed and the matter was remanded to the assessing authority for

reassessment. Against the order passed by first appellate authority dated 1.1.1988, second appeals were filed by the revisionist before the Trade

Tax Tribunal. Both the appeals were dismissed by the Trade Tax Tribunal vide order dated 22nd April, 1991 against which order the present

revision has been filed.

5. Learned Counsel for the revisionist contended that proceedings u/s 21 could not have been initiated on the basis of statement of a partner

recorded on 24th February, 1987. He further submits that the income tax appellate tribunal itself has passed an order on 9th February, 1999 in

which the said statement of partner was held to be made at the time when Kanhaiya Lal was suffering from various diseases and was not well. He

submits that very basis on which reassessment has been started having gone, there is no occasion for opening the reassessment proceeding. He

submitted that the basis on which the assessing authority had reason to believe that any part of turnover has escaped assessment having knocked

out, the said proceedings are liable to be dropped. He has placed reliance on a judgment of this Court reported in 2006 U.P. Tax Cases 67;

Kothari Product Ltd., Kanpur v. Commissioner of Sales Tax and another judgment of this Court reported in 2006 National Tax News Views

(Vo.9) 38; Orient Ceramics and Industries Limited, Bulandshahr v. Commissioner, Sales Tax, U.P. Lucknow.

6. Sri U.K. Pandey, appearing for the respondents, submitted that there is sufficient reason to believe for initiating proceedings u/s 21. He submits

that statement was made by the partner Kanhaiya Lal. In the income tax proceedings and making of statement has not been denied at any stage.

He submitted that even the order of income tax appellate tribunal on which reliance is being placed by the revisionist itself upheld the reassessment

proceedings, hence there is no error in starting proceedings u/s 21. The first appellate authority and appellate tribunal have rightly passed the

orders and there is no merit in the revision.

7. I have considered the submissions of counsel for the parties and perused the record.

8. Section 21(1) provides that if the assessing authority has reason to believe that whole or part of the turnover of a dealer had escaped

assessment to tax, the assessing authority may after issuing notice to dealer assess or re-assess the dealer. Section 21(1) of the U.P. Trade Tax

Act, 1948 is quoted below:

21. Assessment of tax on the turnover not assessed during the year.-(1) If the Assessing Authority has reason to believe that the whole or any part

of the turnover of a dealer, from any assessment year or part thereof, had escaped assessment to tax or has been under-assessed or has been

assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions has been wrongly allowed in

respect thereof, the Assessing Authority may, after issuing notice to the dealer and making such inquiry, as it may consider necessary, assess or

reassess the dealer to tax according to law.

9. For initiating the reassessment proceedings u/s 21(1) the condition precedent is satisfaction of the authority that any part of turnover has escaped

assessment the words used in Sub-section (1) of Section 21 are ""reason to believe"" The subjective satisfaction of the assessing authority has to be

arrived on consideration of objective materials. In the present case parties are not at disagreement that statement was made by Kanhaiya Lal

before the income tax authority on 24th February, 1987 in which he mentioned his turnover which covers the assessment year in question also. The

statement given by the partner of the firm furnished a valid ground for assessing authority for starting reassessment proceedings.

10. The next submission of counsel for the revisionist is that income tax appellate authority having found that the said statement was made by

Kanhaiya Lal when he was suffering from various diseases and was not well. The first appellate authority has remanded to the assessing authority

for reassessment it is for the assessing authority to examine as to what value and credence be given to the statement when reassessment order is

passed. Any observation made by the income tax appellate tribunal with regard to worth and credence of the statement can have no effect on

initiation of proceeding for reassessment, which was made at the time when above appeals have not even come into existence. The submission of

Sri U.K. Pandey that even the income tax appellate authority has upheld the reassessment order is also fully corroborated from the order itself. The

income tax appellate tribunal made following observations in paragraph 5:

5.... During the course of search Kanhiyalal partner admitted having concealed the income to the extent of Rs. 35,000/- in each assessment year

involved and also offered to pay tax thereon. The other material found during the course of search also suggested suppression of sales. The

confession made by Kanhiyalal partner and other incriminating material found fully justified the Assessing Officer to entertain a reasonable belief for

reopening the assessment within the meaning of Section 147 of the Income Tax Act. We have also perused the copies of notices issued u/s 148 as

placed in the first paper book of each year and in our view non-striking of the irrelevant portion thereof does not make the notices vague and

illegal. The Assessing Officer has also recorded detailed reasons for the reopening of each of the assessment as per requirement of Sub-section (2)

of Section 148 of the Income Tax Act. We also find (hat the case laws relied upon by the learned Counsel are distinguishable on facts. On these

facts we are of the considered view that the action taken by the Assessing Officer in reopening the assessments for the assessment years 1982-83

to 1986-97 is justified and valid

11. In Kothari Product's case (supra), as relied by the counsel for the revisionist, the account books of the assessee were rejected by the

assessing officer on the basis of information received from the Central Excise authorities, who surveyed the business premises of the assessee.

Subsequently, the order passed by the appellate tribunal: was brought before the High Court by means of supplementary affidavit. In the said case

noticing the order of the appellate tribunal this Court restored back to the tribunal the appeals for deciding afresh in accordance with the

subsequent developments. The above case was not a case of reassessment and no such ratio has been laid down in the, said judgment, which may

help the revisionist in the present case. Another judgment relied by counsel for the revisionist in M/s Orient Ceramics" (supra) was also a case

where the matter was remanded back to the assessing authority to pass order afresh after taking in to account various orders passed by Central

Excise authority. The said was also not a case of reassessment nor any ratio has been laid down, which may help the revisionist in the present case.

12. In view of the above, I do not find any error in the reassessment proceedings initiated by the assessing authority. The first appellate authority

and the appellate tribunal both have rightly passed the orders which do not warrant any interference by this Court under its revisional jurisdiction.

13. Both the revision is dismissed. Parties shall bear their own costs.