

(2011) 04 AHC CK 0419

Allahabad High Court

Case No: Trade Tax Revision No"s. 11 and 12 of 2005

Sami Brick Field

APPELLANT

Vs

Commissioner, Trade Tax, U.P.,
LucknowRESPONDENT

Date of Decision: April 16, 2011**Acts Referred:**

- Uttar Pradesh Trade Tax Act, 1948 - Section 11

Citation: (2012) 54 VST 498**Hon'ble Judges:** Satish Chandra, J**Bench:** Single Bench**Advocate:** M.M. Dewan, for the Appellant;

Judgement

Dr. Satish Chandra, J.

The present revisions are filed by the assessee u/s 11 of the U.P. Trade Tax Act, 1948 against the judgment and order dated December 22, 2004 passed by the Trade Tax Tribunal, Lucknow in Second Appeal No. 300 of 2002 for the assessment years 1997-98 and 1998-99. The brief facts of the cases are that the assessee is a proprietorship firm and during the assessment years under consideration, it was running a brick kiln for the manufacturing and sales of bricks. A survey was conducted at the business premises of the assessee on June 3, 1998, where various discrepancies were found. So, the assessing officer rejected the books of accounts and made the additions on estimate basis, which were confirmed not only by the first appellate authority but also by the Tribunal. Being aggrieved, the assessee is before this court.

2. With this background, Sri M.M. Dewan, learned counsel for the assessee/revisionist, submits that the impugned order is illegal, improper and against the material on record. He also submits that no firing was done during the second session and the appellate authority has legally erred in determining the

firing period of 10 days from March 22, 1999 to March 31, 1999. He further submits that in the case of Sheo Brick Field v. Commissioner of Trade Tax [2000] UPTC 45, this honourable court has observed that when there was no material showing the brick kiln was running in the second session, firing period could not have been enhanced even the books of accounts were rejected. According to him, the lower authorities have wrongly determined the capacity of the brick kiln as 3.5 lakh bricks, though, it was only 2.5 lakh bricks. He also submits that the production of one lakh bricks, as estimated by the lower authorities in seven days time, is too excessive and highly arbitrary as in a small brick kiln, that of the revisionist. For manufacturing one lakh bricks, the kiln takes too much time. So, finding of the lower authorities are perverse. Lastly, he made a request that the impugned order may kindly be set aside.

3. On the other hand, learned standing counsel submits that it was the assessee, who at the time of survey, disclosed the capacity of brick kiln at 3.5 lakhs and the lower authorities have accepted the same. He also submits that the assessee was not maintaining any proper books of accounts. He further submits that the assessee was neither maintaining any books pertaining to the consumption of coal nor any labour register to show the burning period. Therefore, in these circumstances, on the basis of the earlier burning period, the assessing officer has rightly estimated the burning period.

4. By considering the rival submissions and on perusal of record, it appears that the assessee's firm was engaged in the brick kiln business since long but it was neither maintaining any books of accounts nor any labour register to show the burning period. No consumption of coal register was maintained to prove the capacity of the brick kiln. It also appears that during the survey, the assessee himself has estimated the capacity of the brick kiln. When it is so, then the assessing officer has rightly rejected the books of accounts and made the addition.

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

(1) [New Plaza Restaurant Vs. Income Tax Officer](#), .

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

6. In view of well-settled legal position, it is clear that no substantial 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.

7. In the result, the revisions filed by the assessee have no merit and the same are accordingly dismissed. The interim order dated February 23, 2005 passed in both the revisions stands rejected.