

(1995) 08 AHC CK 0144**Allahabad High Court****Case No:** C.M.W.P. No. 883 of 1985

Shiv Prasad

APPELLANT

Vs

Transport Commissioner and
Others

RESPONDENT

Date of Decision: Aug. 2, 1995**Acts Referred:**

- Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 - Rule 5, 5(3A), 8

Hon'ble Judges: R.A. Sharma, J; I.M. Quddusi, J**Bench:** Division Bench**Advocate:** L.P. Naithani, for the Appellant;**Final Decision:** Allowed**Judgement**

R.A. Sharma, J.

Petitioner claims to be the owner of a contract carriage, which has been assessed to passenger tax u/s 8 of the U.P. Motor Gadi (Yatri Kari) Athenian, 1962 (hereinafter referred to as the Act). The assessment order has been passed on the assumption that he must have operated 4,000 Kilometers in a month. This assumption is based on Sub-rule (3A) of Rule 5, framed Under the Act. Under the Act, It is open to the operator to pay tax on the basis of the return or on the basis of the lump sum agreement. Rule 5 is applicable to a case where a lump sum agreement is reached between the Taxation Officer and the operator. While making an assessment order u/s 8 of the Act, Taxation Officer cannot pass an order on such assumption. It is not the case of the department that the Petitioner has entered into lump sum agreement for payment of tax. Under the circumstances, assessment order cannot be passed on the basis of the criteria contained in Sub-rule (3A) of Rule 5. It is true that the Transport Commissioner has issued direction for making the assessment on assumption that an operator must have operated his vehicle 4,000 Kms. in a month. We have dealt with this matter in writ petition No. 885 of 1985, Shiv Prasad v. The Transport Commissioner, U.P., Lucknow and others, decided today.

2. for the reasons given above and in *Shiv Prasad v. The Transport Commissioner, V.P. Lucknow and Ors.* (Writ Petition No. 885 of 1985) (supra) this writ petition is allowed with costs. Assessment orders dated 19.7.1985 and 6.7.1985 are quashed. The Taxation Officer is directed to pass order afresh in accordance with law after giving due notice to the Petitioner. Petitioner is directed to serve a certified copy of this order on the Taxation Officer within a period of six weeks from today.