

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 115 of 2018

Revisionist :- S/S Siddhi Vinayak Restaurant Elite

Opposite Party :- The Commissioner Commercial Tax

Counsel for Revisionist :- Aditya Pandey

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

Hon'ble Piyush Agrawal,J.

Heard Shri Aditya Pandey, learned counsel for the revisionist and Shri Ravi Shankar Pandey, learned ACSC for the State - respondents.

The present revision has been filed against the judgement & order dated 28.12.2017 passed by the Commercial Tax Tribunal, Jhansi in Second Appeal No. 442/2017 for the assessment year 2015-16.

This Court, vide order dated 03.04.2018, admitted the revision on question nos. A & B, which reads as under:-

"A. Whether on the facts & circumstances of the case, the Commercial Tax Tribunal was legally justified in estimating the taxable turnover at Rs. 35.51 lakh and in estimating the average sales at Rs. 12000/- per day.

B. Whether on the facts and circumstances of the case the Commercial Tax Tribunal were legally justified in estimating the taxable turnover at Rs. 35.51 lakh especially when in the previous and in subsequent assessment year accepted sales of the applicant of Rs. 2098,250/- and Rs. 21,42,450/-."

During the course of the arguments, learned counsel for the revisionist has confined his argument only to the question no. 'B'.

Learned counsel for the revisionist submits that the revisionist is a registered dealer and is running a restaurant where cold drinks, ice cream, etc. are sold. The business premises of the revisionist was surveyed by the Department on 25.02.2016; whereafter, bill nos. 91 to 93 dated 24.02.2016 were seized. On the said basis, a show cause notice was issued, which was duly replied by the revisionist. He further submits that 24.02.2016 happened to be a festival day and public holiday and therefore, the sale was at its pick. He further submits that the solitary survey on the festival day disclosing the sale at a higher quantum cannot be a factor for determining the taxable turnover to Rs. 36,43,866/-. In support of his submissions, he has placed reliance on the judgement of this Court in *M/s Bhagwati Vs. Commissioner of Sales Tax* [1985

UPTC 376].

He further submits that the business of restaurant has always ups & down and therefore, sale of one day, that too on a festival day, cannot be the determined factor. In support of this submission, he has placed reliance on the judgements of this Court in ***Shyam Lal Kesari Vs. Commissioner of Sales Tax*** [1985 (10) ATJ 138] and ***M/s Bharat Traders & Commissions Agents Vs. the Commissioner of Sales Tax*** [1986 (11) ATJ 526]. He further submits that in the subsequent and previous year, the turnover has been accepted by the Department that was determined at Rs. 20,98,250/- & Rs. 21,42,450/-, respectively.

Vide order dated 05.09.2017, the Assessing Authority passed the assessment order estimating the taxable turnover of the applicant to Rs. 65,05,100/-. Against the assessment order, the matter was travelled upto the Tribunal and the Tribunal, vide order dated 28.12.2017, partly allowed the second appeal fixing taxable turnover at Rs. 35.51 lacs. He further submits that the turnover of Rs. 35.51 lacs is excessive. He prays for allowing the revision.

Per contra, learned ACSC supports the impugned order and submits that at the time of survey, no books of account were produced and therefore, the turnover fixed vide impugned order is justified. He further submits that once the books of account were shown, the best judgement assessment can be made. He prays for dismissal of the revision.

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

The counsel for the revisionist only presses question no. 'B' at the time of hearing of the present revision.

It is admitted that the learned counsel for the revisionist has not pressed the acceptance of turnover, but he only presses the estimate taxable turnover fixed at Rs. 35.51 lacs.

On perusal of the record, it reveals that the revisionist has disclosed turnover at Rs. 20,05,100/- and admitted the tax liability of Rs. 2,83,917/-. The books of account were rejected on various grounds and the Assessing Authority has fixed the same at Rs. 65,05,100/-, against which a first appeal was filed, which was rejected. Still feeling aggrieved, the revisionist preferred second appeal, which was partly allowed fixing taxable turnover to Rs. 4,51,648/-.

The only basis of enhanced taxable turnover was the survey dated 25.02.2016, where some bills were found pertaining to the last night, i.e., 24.02.2016. It is categorically argued before the Tribunal that the previous day of survey being a festival day, therefore, the said sale found at the time of survey, which cannot be the only determining factor as held by this Court in the case of *M/s Bhagwati* (supra). It is also noticed that in the business of restaurant, there is always fluctuation in sale and therefore, the same cannot be on a higher side throughout the year as fixed by the authorities below.

In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the judgements cited above, the impugned judgement & order dated 28.12.2017 passed by the Commercial Tax Tribunal, Jhansi in Second Appeal No. 442/2017 is modified to the extent of reducing the taxable turnover and fixing the same at Rs. 25 lacs.

The revision is partly allowed.

The question of law is answered accordingly.

Order Date :- 12.10.2023

Amit Mishra