

MANU/OT/0052/2024

IN THE COURT OF MEMBER, COMMERCIAL TAX TRIBUNAL, BENCH-I, AGRA

IInd Appeal No. 99/2024

Decided On: 07.11.2024

The Commissioner, of Commercial Tax U.P. **Vs.** Touchstone Foundation, Shri Radha
Vrindavan Chandra Mandir, Mathura

Hon'ble Judges/Coram:

Vishnu Chandra Vaish, Member (J)

Counsels:

For Appellant/Petitioner/Plaintiff: Vikas Panwar, A.C./S.R.

For Respondents/Defendant: Kashish Gupta, Advocate

Case Category:

INDIRECT TAXES MATTERS - VALUE ADDED TAX

ORDER

Vishnu Chandra Vaish, Member (J)

1. This second appeal has been filed by the department against the judgment and order dated 01.10.2022 passed by Sri V.K. Shukla, the then Addl. Commissioner, Grade-2 (Appeals), Commercial Tax, Mathura in first appeal no. 81/22 [MAT1/0054/2022] for the assessment year 2015-2016 U/s. 28(2)(i) of the U.P. Value Added Tax Act, 2008 (for short 'the VAT Act'). By the impugned order, the assessment order dated 10.06.2022 passed in provincial cases for the aforesaid assessment year, was modified and disputed tax of Rs.8,76,534/- was reduced by Rs.2,69,326/- by partly allowing the first appeal filed by the assessee.

2. The brief facts of this second appeal are that the assessee deals in the manufacturing and sale of cooked food, purchase and sale of cold drinks, mineral water and religious books and prasadam and also deals in the construction and sale of flats for prospective buyers. Assessing officer in admitted purchases of raw material consumed in the construction of flats by the assessee during relevant year 2015-2016 of Rs.3,83,28,513/-, adding profit @ 20%, had determined deemed sales of the assessee and imposed tax thereon. Apart from it, assessing officer found that in the restaurant business, assessee had not maintained day to day stock cum manufacturing register of each item. Item-wise details of goods sold was also not furnished before the assessing authority. Hence, assessing authority enhancing the disclosed sales of Rs.52,62,591/- by 20%, determined sales of Rs.63.15,110/- and imposed tax thereon. Against this assessment order, assessee disputing tax liability of Rs.8.76,534/- had filed first appeal, which met the fate as aforesaid, hence, present second appeal has been filed by the department.

3. Learned S.R. has argued that the assessing authority had rightly determined the deemed sale adding profit @ 20% in the raw material consumed by the assessee in construction of flats during relevant year and also rightly enhanced the disclosed turnover of the restaurant by 20% but the learned first appellate authority has determined the deemed sale after adding 10% profit only in the matter of construction

of flats and also determined sales by enhancing 10% of the disclosed sales in the case of restaurant, which is not justified. With these arguments, learned S.R. has prayed to allow the departmental appeal and restore the assessment order.

4. It has been argued by the learned counsel for the assessee that the deemed sales had been determined by the assessing authority arbitrarily and excessively, which has been determined by the learned first appellate authority after adding 10% profit in raw material consumed by the assessee in construction of flats during relevant year in the light of judgment passed by the Hon'ble Allahabad High Court in the case of C.C.T. Vs. M/s. Design Arch Infra Pvt. Ltd. [2016 NTN (Vol. 60) - 362], which is legally and factually correct. It has been further argued that similarly in the matter of restaurant, as no specific evasion was found, hence, merely on the basis of technical defects learned first appellate authority has rightly enhanced the disclosed turnover by 10% only. With these arguments, learned counsel for the assessee has prayed to dismiss the departmental appeal.

5. I have heard both the parties and have perused the record.

6. On perusal of record, it transpires that in the matter of construction of flats, the assessing officer had determined deemed sale after adding profit @ 20% in the raw material consumed in construction of flats during relevant year. Learned first appellate authority adding 10% profit in the raw material consumed in construction of flats during relevant year, has determined deemed sale on the basis of judgment of Hon'ble Allahabad High Court in the case of CCT Vs. M/s. Design Arch Infra Pvt Ltd. [Supra]. I have gone through the facts of the present case and the law laid down by Hon'ble Allahabad High Court in the aforesaid ruling. In the aforesaid case, Division Bench of the Tribunal had allowed benefit of I.T.C. and had determined the deemed sale after adding 10% enhancement on the purchases of raw material used in the execution of works contract. Both these findings of the Division Bench of Tribunal, were challenged by the department before Hon'ble Allahabad High Court. Hon'ble Allahabad High Court in the aforesaid ruling has found the findings of the Division Bench of the Tribunal legally and factually correct and has dismissed the revision filed by the department. The facts of the present case are similar to the facts of the aforesaid ruling passed in the case of C.C.T. Vs. M/s. Design Arch Infra Pvt. Ltd. [Supra]. Hence, relying upon the aforesaid ruling of Hon'ble Allahabad High Court, I am of the considered opinion that learned first appellate authority has committed no error in determining the deemed sales of the assessee after adding 10% amount in the raw material consumed by the assessee in construction of flats during relevant year.

7. So far as the determination of turnover in the matter of restaurant is concerned, it transpires from perusal of record that assessee had not maintained day to day manufacturing cum stock register despite being a manufacturer. Apart from it, the item-wise details of goods sold was also not furnished before the assessing authority. Hence, assessing authority had determined turnover by enhancing the 20% in the disclosed turnover. Learned first appellate authority has determined turnover by enhancing 10% in the disclosed turnover. On perusal of orders passed by both the authorities below, it transpires that no specific evasion was pointed out by the authorities below and enhancement in turnover was made only on the basis of certain technical defects in maintaining the account books of the assessee. Hence, I am of the considered opinion that learned first appellate authority has committed no error in determining the turnover of the restaurant of the assessee after adding 10% amount in the turnover disclosed by the assessee in the matter of restaurant of the assessee during relevant year.

8 . Considering the first appellate order by which the fresh turnover has been determined, I find that this turnover is quite just, reasonable and proper and for this turnover a basis has also been given by the first appellate authority, which cannot be said to be unjustified. Accordingly, the first appellate order is found to be legally sustainable and correct and does not require any interference by this Tribunal. Hence, the second appeal filed by the department is found to be devoid of merit and is liable to be dismissed.

-:: ORDER::-

The aforesaid second appeal no. 99/2024 (2015-2016) Provincial filed by the department is hereby dismissed and the impugned judgment and order passed by the learned first appellate authority are confirmed.

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