

# Radha Kishan Bhagwan Din vs Commissioner Of Sales Tax on 17 July, 1951

**Equivalent citations: AIR1952ALL422, AIR 1952 ALLAHABAD 422**

## JUDGMENT

Sapru, J.

1. This is an application under Section 11, U.P. Sales Tax Act, 1948, praying that this Court may be pleased to direct the Judge (Revisions) Sales Tax, Uttar Pradesh, Lucknow, to refer to this Court the following questions :

"1. Is the deposit of quarterly instalments by the assessee and the mention of the relative quarter in the Treasury Challan followed by a return for the quarter, though filed beyond time but before the Assessment Order was made by the Sales Tax Officer not an election of the assessment year by an assessee within the meaning of Section 7 of the Act read with Rules 39 and 41 ?

2. Is the Sales Tax Officer entitled under Section 7 (3) of the Act to ignore a return of turnover filed by the assessee beyond the time prescribed by it before an Assessment Order is made, to assess the assessee to the best of his judgment as if the assessee was in default."

2. The appellants (applicants ?) carry on business as merchants in Kanpur. The Sales Tax Department assessed them under Section 7 (3), U. P. Sales Tax Act on an estimated turnover of Rs. 16,00,000 for the previous year ending with 31-3-1948. It would appear that two cheques were deposited by the applicants, the first one dated 30-8-1948 for a Sum of Rs. 5,051-1-0 and the second one dated 20-11-1948 for a sum of Rs. 4,307-11-0. The applicants, however, took no steps to intimate to the Sales Tax Officer their election of the assessment year. Along with the these cheques or subsequent to the deposit of these cheques no return of the total turnover either of the previous year or of the current year was filed by the applicants till 6-12-1948. Finding that there had been inordinate delay in the filing of the return, the Sales Tax Officer passed the assessment order as he was, indeed, entitled to do under Section 7 (3) of the Act on 13-12-1948. It is to be acted that against that order no appeal was filed. Thereafter, the assesses presented an application to the Judge (Revisions), Sales Tax, Uttar Pradesh, which was dismissed on 18-11-1949. By that order the assessment order was confirmed. At the stage when the revision application was heard, the only point which was urged before the teamed Judge (Revisions), Sales Tax, was that the assessment should not have been based on the turnover of the previous year but on the turnover of the assessment year. This contention was turned down by the Judge (Revisions), Sales Tax. After the

application in revision had been rejected, the applicants applied to the learned Judge (Revisions), Sales Tax, to refer the two questions which have been stated above to this Court. The learned Judge (Revisions), Sales Tax, refused to do so. In our opinion, the learned Judge (Revisions), Sales Tax, was perfectly justified in doing so. By their conduct the applicants disqualified themselves from asking the learned Judge (Revisions), Sales Tax, to refer the question to this Court. As has been pointed out before, no returns of their total turnover had been filed by them either of the current year or of the previous year within the prescribed time. The two cheques which were deposited in the Treasury in the name of the Sales Tax Department cannot be regarded as substitutes for the returns which the applicants were under a duty to file under the proviso to Section 7 as also under Rule 39 of Chap. 8. This being the state of affairs there is no force in this case. We, therefore, reject this application with costs. The learned standing Counsel shall be entitled to a fee of Rs. 200.

3. We may say that a copy of the order of the learned Judge (Revisions), Sales Tax, refusing to Submit the case to this Court was not filed along with the application presented to this Court by the applicants. We are informed that no rules in regard to the papers to be filed along with applications under the Sales Tax Act have as yet been framed by this Court. Until such time as these rules come to be framed by this Court the rules which apply in regard to the filing of judgments, orders and other papers in connection with Income-tax References should be deemed to be applicable to references under the Sales Tax Act.

4. A copy of this order shall be sent to all the three Bar Associations and to other Hon'ble Judges.