

Rajasthan Tax Board, Ajmer

Appeal No. 1363/2017/Jaipur

M/s P.M. Allah Baksh & Sons,
M.I. Road, Jaipur

...Appellant

VERSUS

Assistant Commercial Taxes Officer,
Ward-I, Circle-B, Jaipur

.....Respondent

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Bhanu Pratap Singh,
Advocate

for Appellant

Shri Ramkaran Singh,
Dy. Govt. Advocate

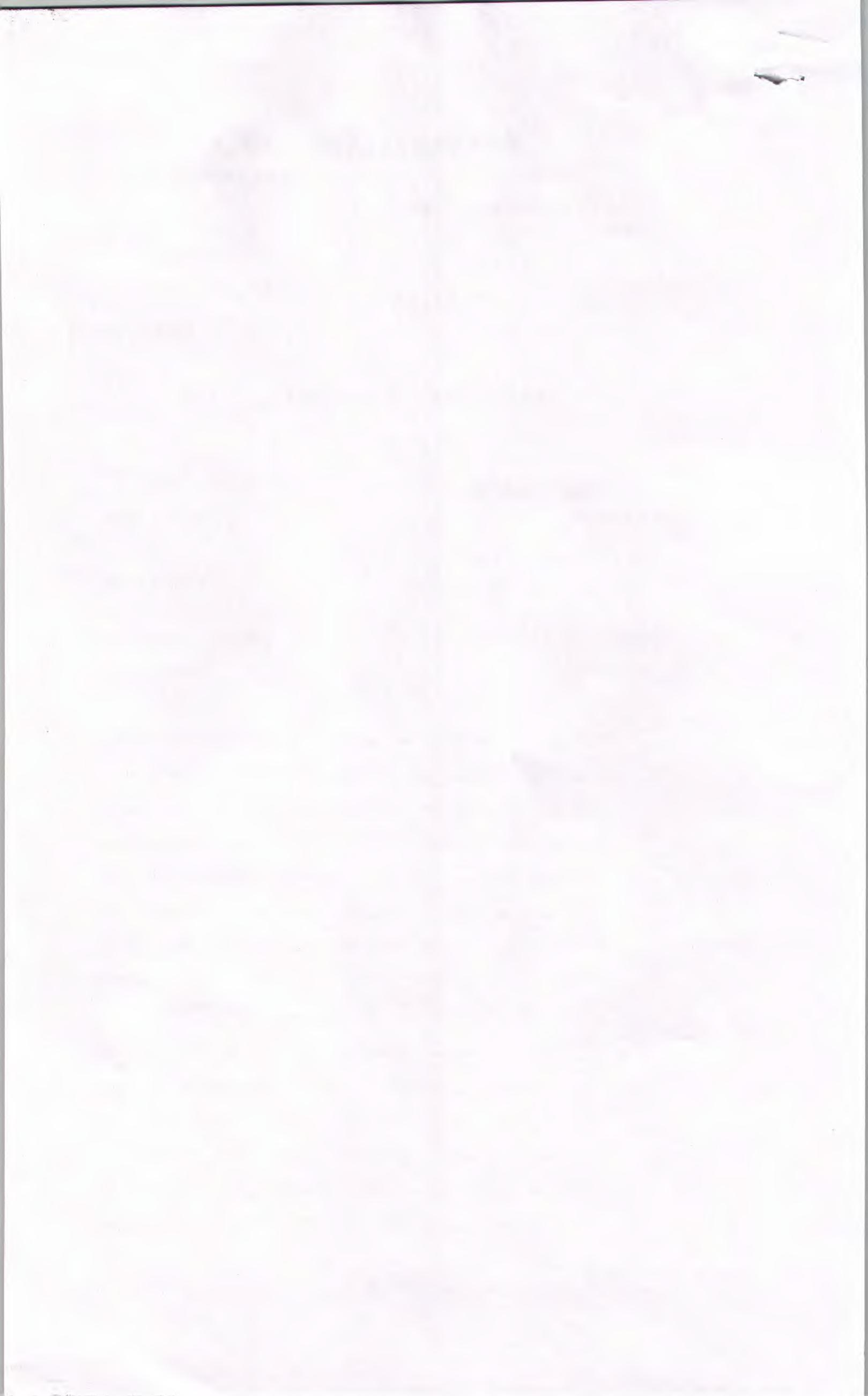
for Respondents

Dated : 02.05.2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant"), against order of the Deputy Commissioner (Adm) III, Commercial Tax Department, Jaipur (hereinafter called the "DC (Adm)") dated 12.07.2017, who rejected the application of the appellant to re-open the ex-parte assessment for the year 2012-13 as passed by the Assistant Commercial Taxes Officer, Ward-I, Circle-B, Jaipur (hereinafter called the "assessing officer" or "AO") dated 17.06.2015, under section 24(4) of the Rajasthan Valued Added Tax Act, 2003 (hereinafter called the "RVAT Act").
2. Brief facts leading to the present appeal are that the assessing officer finalized the assessment of the appellant for the year 2012-13 on ex-parte basis on 17.06.2015 and created a demand of Rs. 1,37,172/-. Aggrieved of this ex-parte order, the appellant moved an application u/s 34 of the RVAT Act before the DC (Adm), who vide his order dated 12.07.2017 rejected the same





for the reason that despite giving sufficient opportunity, the dealer has not appeared nor has filed any reply. Aggrieved of this order, the appellant has filed this appeal before the Rajasthan Tax Board u/s 83 of the RVAT Act.

3. The learned advocate appearing for the appellant submits that the proprietor of the appellant firm Shri Ahsan Elahi expired on 22.02.2015 and his legal heir did not get any notice and if at all any notices were sent by the department on the e-mail address as available with the department which belong to their tax practitioner, the same were not communicated to the legal heirs of the deceased proprietor of the appellant firm. He further submits that the Deputy Commissioner (Adm) has ignored this material fact and practical problems of smaller dealers, hence, he requests to set aside the impugned order and accept the appeal so that the matter can be re-assessed at the level of the AO.
4. Learned Deputy Government Advocate appearing for the respondent Revenue contends that the notices were sent on e-mail to the appellant by the AO as well as the DC (Adm) but the appellant failed to appear before both the authorities, therefore, order of the DC (Adm) is just and proper and the appeal deserves to be rejected.
5. I have gone through the rival submissions and perused the available record. As per the death certificate issued by the South Delhi Municipal Corporation bearing no. SA-891302 dated 22.07.2015, Shri Ahsan Elahi died on 22.05.2015 at Indraprastha Apollo Hospital, Sarita Vihar, Mathura Road, New Delhi and as per the affidavit filed by his son Shri Mohd. Sohail Elahi, the business of the said firm was discontinued after that. So, in the given circumstances of the case, the DC (Adm) could not appreciate the facts of the case because the notices were not served to the legal heir(s) of the deceased proprietor of the appellant firm, though it was a fit case for re-opening of the ex-parte assessment.





6. In the facts and circumstances of the case as narrated above, the order of the DC (Adm) as well as the assessment order dated 17.06.2015 are set aside and the matter is remitted to the AO for deciding it afresh after giving due opportunity to the appellant. The appellant/legal heir of the deceased proprietor of the appellant firm, in turn, is directed to appear before by A.O. on 15.06.2018 and to furnish the information/document as required by him.
7. Order pronounced.


02.05.2018
(Omkar Singh Ashiya)
Member

