

**RAJASTHAN TAX BOARD**

**1. Appeal No. 424/2014/Ajmer**

**2. Appeal No. 425/2014/Ajmer**

**3. Appeal No. 426/2014/Ajmer**

**4. Appeal No. 427/2014/Ajmer**

M/s H. B. Furniture House,  
Prakash Road, Nagra, Ajmer

...Appellant

Versus

Assistant Commissioner, Anti-Evasion,  
Circle-III, Jaipur

...Respondent

**D.B.**

**Shri V. Srinivas, Chairman**

**Shri K. L. Jain, Member**

**Present:-**

Shri O. P. Maheshwari, AR

...for the Appellant

Shri D.P. Ojha, Dy. Govt. Advocate

...for the Respondent

**Date of order :- 22-08-2017**

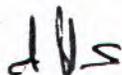
**JUDGMENT**

1. All these four appeals have been filed against the order of the deputy Commissioner (Administration) (Antievasion) Commercial Taxes Jaipur dated 05-02-2014 whereby all the applications U/s 34 of RVAT Act 2003 for reopening the exparte assessment order passed by the assistant commissioner (AE) Rajasthan Circle-III, Jaipur dated 20-12-2013 were rejected. Since the facts and point of dispute involved in all these appeals are similar in nature and concerned to the same assessee, we propose to dispose them off by this common order, a copy of which may be placed on each case separately.

2. Briefly stated, the facts of the case are that on 13-09-2012 a survey was conducted at the premises of the appellant and seized some papers alleged to be unaccounted in regular books of accounts and suspected to be a case of evasion of tax. The enquiry officer had conducted an exparte audit of the seized papers as the assesses did not appear before him after several opportunities given for the purpose.

3. After making out the case on the basis of audit of the entries found in seize papers, the file was transferred to the assessing authority who passed the exparte assessment orders for the year 2009-10, 2010-11, 2011-12 and 2012-2013 as the assessee did not appear on 11-11-2013, the date fixed for hearing.





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4. Aggrieved by the exparte orders for the above stated years, separate applications were presented before the respondent Deputy Commissioner U/s 34 of the Act to quash the exparte order, seeking instruction for assessing authority to pass fresh orders after giving proper opportunity of hearing but the respondent officer rejected the application. Hence these appeals by the appellant.

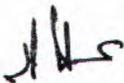
Arguments of both the learned counsel were heard and proceeding on record were also perused.

5. Learned counsel for the appellant argued that the all the exparte assessment orders were passed on dated 20-12-2013 without proper service of notice. He further argued that the last notice shown to be served as affixed on the business premises on dated 09-11-2013 was for 11-11-2013 but the order was passed without any further information on 20-12-2013. The learned counsel submitted further that he had moved an application on 12-08-2013 well before the order for issuing copies of exparte audit report to enable him to reply for the alleged evaded sales but the assessing authority never supplied the same hence the appellant was deprived of any opportunity to file reply to the notice issued by the AA. The learned Counsel argued that he had submitted all the reasonable causes, before DC (Administration), which prevented him to appear before the AA but the DC rejected all the applications U/s 34 and deprived him of justice thereto.

6. The leaned DGA for the Revenue supported the order of the DC and Assessing Authority and stated that the appellant was not willing to appear before the assessing authority since beginning, to avoid creation of demand for evasion of tax by him.

7. Having carefully considered the arguments of both the learned counsel and the facts of the case on record, we are of the view that though initially appellant was not responding to the enquiry officer's notice for audit purpose, but application filed on 12-08-2013 by the authorized counsel reveals that appellant wanted to file reply to the notice and for the purpose, the copy of audit report was sought to be

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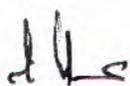
 

supplied but the note-sheet available on the file has not mentioned anything about it and secondly it is also very clear that the only notice for hearing shown to be affixed on 09-11-2013 was for the day of 11-11-2013 and it was also reported by the officer that the appellant was not present at the business premises, when the notice was affixed. The respondent DC has narrated only affixation of notice, but it is true that the order was not passed on 11-11-2013 and no further proceeding were drawn and after more than a month ex parte order was passed on 20-12-2013 without any specific notice and even without supplying the required audit report. We found that the appellant was prevented by reasonable cause for non-appearance hence a reasonable opportunity of hearing must be given in the interest of natural justice, therefore the order of assessing authority and the respondent DC (Administration) are quashed and all the cases are remanded back to AA for fresh assessment, after giving adequate opportunity of hearing to appellant.

8. Appellant is also directed to appear before the assessing authority on 15-09-2017 with all the books of accounts along with seized papers which have already been released to him.

9. Order pronounced.

  
(K. L. Jain)  
Member

  
(V. Srinivas)  
Chairman