

(1976) 12 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1848 of 1966

Akbarali Amantali

APPELLANT

Vs

Asst. Com Taxes Officer

RESPONDENT

Date of Decision : 10-12-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 16, 33A, 34, 35

Citation : (1976) RLW 648 : (1976) WLN 815

Hon'ble Judges : M.L. Jain, J;A.P. Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.P. Sen, J.—This is a petition under Article 226 of the Constitution filed by M/s. Akbarali Amanatali, Pali, seeking to quash three orders of reassessment dated 16-11-1966 u/s 12(1) of the Rajasthan Sales Tax Act passed by the Assistant Commercial Taxes Officer, "C" Ward, Pali.

2. The petitioners are a partnership firm engaged in the business of manufacture and sale of bangles and are registered as dealer under the Rajasthan Sales Tax Act, 1955, hereinafter referred to as "the Act". The firm has been granted an exemption certificate u/s 4(3) of the Act by virtue of Notification No. F.21(7)SR/55 dated 14-5-1955, which reads:

(11) Bangles made of lac, Topali (of coconut), Xylonite or Catalin tube.

3. For the assessment years 1959-60, 1960-61 and 1961-1962, the petitioner's firm filed returns claiming exemption from sales tax on the sale of bangles made by it. The Sales Tax Officer, Pali by his assessment orders allowed the exemption claimed and raised no demand.

4. In the month of March 1963, the Sales Tax Officer Pali, having discovered that the exemption was wrongly allowed issued notices u/s 12(1) with respect to the aforesaid assessment years with a view to reassess the petitioner's business on

the ground that the sales had escaped assessment. The notices were not in the prescribed Form ST 12-A but Mere in Form ST 12. In D.B Civil Writ Petition No. 76 of 1963 : Abbas Ali Asgar Ali and Ors. v. Sales Tax Officer, Pali, decided on 11-8-64 this Court quashed the notices. On 29-9-65, the Assistant Commercial Taxes Officer, "C" Ward, Pali accordingly issued fresh notices u/s 12 of the Act for the years aforesaid in the prescribed Form ST 12-A, proposing to reassess the petitioner for the said years on the ground that the deductions under the exemption certificate claim were wrongly allowed. The petitioner in response to the show cause notice filed a written submission where in it was asserted:

That during the course of the assessment proceedings including the examination of books, other papers and vouchers relating to the said years upto 1961-62, the assessing authority has besides examining other matters, also examined the claim for deduction on account of sales of bangles made of Xylonite and Catalin tubes as covered by the Exemption Certificate. While examining this claim, the petitioner; made it known to the assessing authority that the assessee has besides other goods also purchased "STYRON" and thereafter manufactured bangles therefrom and sold, the" same. The petitioner has also shown the purchase vouchers of "Styron" which are verified to be duly entered in the books by the assessing authority.

5. The Assistant Commercial Taxes Officer, however, on examination of the account books maintained by the petitioners found that there was no basis for this assertion and that indeed, the petitioners were not entitled to any exemption as claimed. He states in his orders that he had closely examined the account books and "they reveal a "powder khata" and sales of bangles. under the names Muthia, Chudli, Khancha, Khancha Tookda, etc. The word "xylonite" nowhere occurs in the account books of the assessee. For instance, it appears that the trading account of the assessee For the assessment year 1959-60 merely shows : Exempted u/s 4(2) : Powder account Rs. 418/11/3. He accordingly passed the impugned orders of re assessment and subjected the sales to tax. The petitioner instead of preferring an appeal against the orders of re-assessment straight away has filed this writ petition.

6. The State of Rajasthan has in its, reply denied that the, order of re-assessment was illegal or invalid. On the contrary, the Government asserted that the turnover Was wrongly exempted from tax whereas, in fact, it was liable to tax. The turnover having escaped assessment, the Assistant Commercial Taxes Officer, it was said, had the jurisdiction to pass the orders of reassessment in question u/s 12(1) of the Act. It was then stated that it was purely a question of fact whether the goods made of powder having no reference to the exempted goods can be treated as goods exempted u/s 4(2) of the Act, and that it was not merely a question of change of opinion. Further that the remedy of the petitioner was by way of an appeal and by reference and the extra ordinary jurisdiction of the High Court cannot be invoked under Article 226 of the Constitution to determine such disputed questions of fact.

7. In the support of the petition, learned Counsel has advanced two contentions, namely, (i) there could be no re-assessment u/s 12(1) of the Act on a mere change of opinion and consequently the notice of re-assessment in Form 12-A issued by the Assistant Commercial Taxes Officer were invalid and the proceedings were vitiated, and (ii) the High Court had the power to issue a writ of certiorari under Article 226 of the Constitution, the. Assistant Commercial Taxes Officer having acted without jurisdiction.

8. Much stress was laid on the decisions of their Lordship in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and Sales Tax Officer, Ganjam and Anr. v. Uttarehwari Rice Mills* (1972) 30 STC 567. It was urged on the strength of these decisions that the existence of alternative remedies by way of appeals, revisions and references to the High Court should not, and cannot, be sufficient reason for, refusing a writ or order in the nature of prohibition or certiorari, where the authority acts with jurisdiction. The decision of their Lordships in *Calcutta Discount Co. Ltd. v. Income Tax Officer, Calcutta* (supra) is of no avail to the petitioner. The scheme u/s 34 of the Income Tax Act, 1961 is entirely different.

9. Section 12(1) of the Act so far as material reads:

12. Assessment of tax and levy of exemption fee or registration fees incorrectly assessed : (1) If for any reason the whole or any part of the business of a dealer has escaped assessment to the tax, or if the registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year, the assessing authority, may serve on the dealer liable to pay the tax in respect of such business or such registration fee or exemption fee a notice in the prescribed form and may proceed to assess or reassess the amount of the tax or levy, the correct amount of registration fee or exemption fee from such, dealer.

10. u/s 34 of the Income Tax Act, 1961, the Income Tax Officer should have "reason to believe" that the income chargeable to tax has escaped assessment for relevant year, or has been under-assessed, or assessed at too low rate; etc. The words "reason to believe" impose a condition to the exercise of the powers to make, a re-assessment u/s 34. Unlike Section 34 of the Income Tax Act, Section 12(1) of the Rajasthan Sales Tax Act, 1954 uses the words. "If for any reason, the whole or any part of any business of a dealer has escaped assessment to tax or has been assessed at too low a rate in any year, etc.

11. The words "for any reason" in Section 12(1) of the Act are wide enough and the powers of the Commercial Taxes Officer under the section are not circumscribed by any condition. In *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, , their Lordships while interpreting the Bihar Agricultural Income Tax Act, 1938, which used the same expression, observed:

The use of the words "any reason" which are of wide import, dispenses with those conditions by which Section 34 of the Indian Income Tax Act is circumscribed.

See D.B. Civil Writ Petition No. 665 of 1970 Bhanwar Lal Biniaram v. The Assistant Commercial Taxes Officer, Ward II, Circle "A", Jodhpur, decided on 29-10-1976. The decision of the Division Bench in National Clinic v. Asst Commercial Taxes Officer, Sri Ganganagar RLW 1966 257, which lays down that there can be no re-assessment u/s 12(1) of the Act on mere change of opinion therefore does not lay down good law.

12. The other decisions retted upon by the petitioner relating to chargeability of Income Tax on re-assessment "under Section 34 of the Income Tax on a mere change of opinion on the part of the reassessing officer who differed from his own previous opinion or that of his predecessor in office are entirely different and need "not therefore be dealt with.

13. The decision in Sales Tax Officer, Ganjam v. Uttreshwari Rice Mills (supra) is, however; pressed into Service for the contention that there is not much difference in the schemes for re-assessment u/s 34 of the Income Tax Act and Section 12 of the Rajasthan Sales Tax Act. Our attention is drawn to the following observations of Khanna. J.:

Although the opening words used in Section 12(8) are "if for any reason" and not "if the sales tax authority has reason to believe." the difference in phraseology, in our opinion, should not make much material difference. A reason cannot exist in vacuum. Somebody must form the belief that reason exists and looking to the context in which the words are used, we are of the view that it should be the sales tax authority issuing the notice who should have reason to believe that the turnover of a dealer has escaped assessment or has been under-assessed. The approach in this matter has to be practical and not pedantic. Any view which would make the opening words of Section 12(8) unworkable has to be avoided. It may be noted in this context that in Form VI appended to the Rules, which has been prepared in pursuance of Rule 23, the words used are whereas I have reason to believe that your turn-over has escaped assessment.

These observations cannot, in our opinion, be read out of context. Their Lordships were no doubt dealing with Section 12(8) of the Orissa Sales Tax Act, 1947, the opening words of which were the same as in Section 12(1) of the Rajasthan Sales Tax Act but the difference lay in the fact that Form VI, the prescribed form of notice under Rule 23 used the words "whereas I have reason to believe". Under the Orissa Sales Tax Act, therefore, the words "if for any reason" and "whereas I have reason to believe" were used more or less in the same sense and the expressions were interchangeable.

14. That decision of the Supreme Court is indeed against the petitioners as it lays down that there was nothing in the language of Section 12(8) of the Act which either expressly or by necessary implication postulates the recording of reasons and their Lordships, in effect, allowed the appeal preferred by the Sales Tax Officer and negatived the contention that the notice issued should be quashed as the reason which led to the issue of the notice had not been

mentioned. Their Lordships referred to their decisional. *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, , laying down that the reasons for initiating action u/s 34 of the Income Tax Act, as a condition for the initiation of the proceedings, need not be disclosed to the assessee.

15. The decision in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon and Anr. v. Dhanalakshmi Vilas Cashew Co.* (1969) 24 STC 491, is also distinguishable. There, their Lordships held that where a turnover had escaped assessment, it could not be brought to tax by recourse to Section 15(1) of the Kerala General Sales Tax Act i.e., in revisional jurisdiction by the Deputy Commissioner but it could only be re-assessed under Rule 33 which confers powers of reassessment. In accepting the contention of the assessee their Lordships observed that the power of re-assessment of an escaped turnover under Rule 33 could be exercised on matters de hors the record of assessment proceedings before the assessing authority inasmuch as the substantive provisions of the Act there do not expressly deal with the power and procedure for assessment and escaped turnover. The scheme under the Kerala General Sales Tax Act was, therefore, entirely different.

16. The Rajasthan Sales Tax Act provides for a complete machinery and recourse must be had to that machinery for redress, and not by a petition under Article 226 : *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, Delhi Cloth and General Mills Co. Ltd. and Ors. v. R.R. Gupta and Ors.* (1976) 38 STC 113 and *Income Tax Officer, Lucknow Vs. S.B. Singar Singh and Sons and Another*, In the fact and circumstances of the present case, the question involved is essentially a pure question of fact.

17. A large number of authorities were, however, cited before us in support of the contention that where a quasi-judicial authority usurps jurisdiction by wrongly deciding a jurisdictional fact, the High Court has power to interfere by issue of a writ of certiorari. The principles are well-settled and there can be no quarrel with the proposition. The question whether the jurisdictional fact has been rightly decided or not, is a question that is open for examination by the High Court in an application for writ of certiorari : *Raza Textiles Ltd. Vs. Income Tax Officer, Rampur*, . That principle is not attracted to the instant case.

18. The question whether the petitioners were or were not entitled to any exemption u/s 4(3) of the Act by virtue of the exemption certificate granted to it under Notification No. F. 21(7)SR/55 dated 14th April, 1955 is a controverted fact. The State Government has in its reply asserted that the assessing authority found on an examination of the account books of the petitioners that there was no mention of any sales of bangles made of "xylonite tubes". It is mentioned in the orders of re-assessment that the account books only showed a "powder account". This aspect has been dealt with elaborately by the Assistant "Commercial Taxes Officer in the re-assessment orders. If the petitioners were dissatisfied, their remedy was by way of an appeal to the Deputy Commissioner (Appeals), revision to the Board; of Revenue and by reference to the High Court.

We do not see how can the High Court grant any relief to the petitioner when there is no material on record to show that the bangles sold by the petitioner were made of xylonite tubes.

19. None of the decisions relied upon support the contention that merely because a notice is invalid the order of re-assessment can be quashed, by a writ certiorari. They were all cases where the assessee came to the court after service of a notice of re-assessment.

20. There is a difference between a writ of prohibition, which issues as a matter of course, and a writ of certiorari, which is in the discretion of the Court. This aspect has been fully dealt with by Wanchoo C.J. in the Division Bench decision in *Ram Niranjana Kedia v. IT Officer, "A" Ward, Udaipur and Ors.* ILR (1957) Raj 509. After the Assistant Commercial Taxes Officer had passed the orders of re-assessment and imposed the tax, there remained no question of prohibiting him in exercising his jurisdiction. No writ of prohibition, therefore, lies. A writ of certiorari is a discretionary writ and the High Court is not bound to interfere when there is adequate alternative remedy provided under the Act.

21. It is, however, urged on the strength of *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, and *State of West Bengal Vs. North Adajai Coal Co. Ltd.*, that the High Court having entertained the petition and given a hearing on merits, the writ petition cannot be rejected on the ground that the petitioners have not availed of their statutory remedy. The submission is that, normally before a petition under Article 226 of the Constitution is entertained, there should be recourse to the statutory authorities which have power to give relief. But that is, it is said, a rule of practice and not of jurisdiction. The decisions in *Hirday Narain v. Income Tax Officer, Bareilly* (Supra) & *State of West Bengal v. North Adajai Coal Co. Ltd.* (supra) turned on their own peculiar features & do not lay down any rule of universal application. In *Hirday Narain v. Income Tax Officer, Bareilly* (supra), the income was assessed in the hands of Hirday Narain in the status of a Hindu Undivided Family & the income of minor sons was included by wrongly applying Section 16(3)(a)(ii) of the Income Tax Act. The Commissioner of Income Tax declined to give relief u/s 35 on the ground that Hirday Narain should have been assessed as an individual. The HC observed that u/s 35 the jurisdiction of the Income Tax Officer was discretionary and therefore, no writ or direction could be issued. This was obviously wrong. In dealing with the questions it was observed:

If the High Court had not entertained his petition, Hirday Naram could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer u/s 35 but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits.

The decision is therefore clearly distinguishable. Similarly, in *State of West*

Bengal v. North Adjai Coal Co. Ltd. (supra) the sales were in the course of export and, therefore, exempt u/s 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act; 1941. The facts were not in dispute.

22. Before parting with the case, we would like to observe that we are informed that other dealers in bangles similarly placed as the petitioners, who had pursued their normal remedy as provided in the Act, have not been subjected any tax having regard to the nature of business & the exemption certificate. It is said that bangles sold by the petitioners were, in fact, manufactured out of "xylonite" powder which had to be imported from abroad as a raw material. Our attention was sought to be drawn to bills of lading and other documents to bear this out. It is also said that the petitioners have other materials to show that the bangles sold by them were manufactured out of nothing but xylonite tubes and therefore, qualified for exemption. These are all matters for the Sales Tax authorities to consider. We refrain from expressing, any opinion thereon and leave the petitioners to seek their redress, if any, from the authorities concerned.

23. The writ petition, therefore, fails and is dismissed with costs.