(1977) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 3680 of 1973

A.P. Vasudevan APPELLANT

Vs

State of Madras RESPONDENT

Date of Decision : 18-11-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 66(1), 66(2)

Citation : (1978) ILR (Mad) 428

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : K.C. Rajappa, for the Appellant; M.V.B. Bhaskaran, for Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The Petitioner was running a touring talkies under the name and style of Karthikeyan Touring Talkies at Sankari. On 27th

December, 1968, the Deputy Commercial Tax Officer (Entertainments Tax Squad) arranged for the test purchase of one male floor ticket and one

male bench ticket for the second, show on 27th December, 1968 in the theatre through two persons, one M.S. Vasudevan and one K.V.

Palanimalai, last grade government servants, and inspected on 28th December, 1968 at 8-45 p.m. when the first show was in progress. During the

inspection it was found that two tickets bearing Nos. 28743 and 13426 which were issued on the previous day were found to be reissued and

were in possession of two spectators. Immediately statements were taken from the spectators who were in possession of the two tickets and also

from the Petitioner. In view of the fact that the tickets bearing same numbers were reissued on subsequent date, the inspecting officer felt that the

Petitioner has been in the habit of issuing duplicate tickets and suppressing the same with a view to evade payment of entertainment tax. Therefore

the matter was referred to the Entertainments Tax Officer, Tiruchengode who issued a notice dated 1st February, 1969 to the Petitioner calling

upon him to appear for an enquiry regarding the inspection of the theatre on 28th December, 1968. After enquiry the Entertainments Tax Officer

issued a notice to the Petitioner to show cause why his returns for the weeks ending from 3rd November, 1968 to 29th December, 1968, should

not be rejected and assessments made on best judgment basis for those weeks and why penalty should not also be levied. After considering the

objections filed by the Petitioner the Entertainments Officer passed 18 independent order on 7th July, 1969 for the said 9 weeks both under the

Entertainments Tax Act and under the Tamil Nadu Local Authorities Finance Act by including the tax escaped under the parallel set of tickets sold

by the proprietor. He also levied penalty for all the weeks. The Petitioner filed 18 appeals against the 18 orders of the Entertainments Tax Officer,

dated 7th July, 1969 which were however dismissed on 12th November, 1969. The Petitioner thereafter preferred 18 revision petitions to the

Deputy Commissioner, Coimbatore which also failed. Subsequently the Petitioner preferred 18 revision petitions to the Commissions

(Entertainments Tax), the Respondent herein. The Commissioner dismissed all the revision petitions by a common order dated 14th November,

1972. In this writ petition the Petitioner has questioned the validity of the said common order relating to 9 independent orders under the Tamil

Nadu Entertainments Tax Act and another 9 independent orders under the Tamil Nadu Local Authorities Finance Act.

2. In this writ petition the Petitioner has contended that the fact that two duplicate tickets were found on a particular day will not lead to the

assumption that he has been in the habit of issuing duplicate tickets and ending tax for about 9 weeks especially when there is no material to

indicate that in all the earlier weeks he had issued duplicate tickets. The Petitioner''s case is that if, at all, there can be a revision of assessment only

for the week during which the inspection took place and not for the earlier weeks.

3. From the counter-affidavit it is seen that the assessing authority proceeded on the basis that having regard to the numbers which are found in the

duplicate tickets detected at the time of inspection it can fairly be assumed that the entire series from 1 upto the number found in the duplicate

ticket should have been utilized by the Petitioner during the earlier weeks. Therefore it is only from an assumption or inference that there has been

an escapement of tax in the earlier weeks also, the revision of assessment for the earlier weeks have been made. Having regard to the fact that if a

theatre owner wants to use duplicate tickets from a particular day or a week he can do so only using the number which are found in the original

tickets, merely because duplicate tickets contained certain numbers one cannot go backwards from that number upto 1 and say that the Petitioner

has actually evaded tax in the earliest weeks by the use of duplicate tickets. It is not therefore possible to agree with the assumption made by the

authorities that the Petitioner had actually used duplicate tickets in the earlier weeks. Though on this ground the Petitioner is entitled to succeed in

relation to the revision of assessments for the earlier weeks, he cannot be granted the relief except for the first week ending 3rd November, 1968

as I am upholding the preliminary objections taken by the State as to the maintainability of a single writ petition challenging the validity of as many

as 18 independent orders of assessment.

4. It is not in dispute that there were 18 proceedings before the assessing authority, the appellate authority and the two revisional authorities. In fact

the original, appellate and the first revisional authority passed independent orders and it is only the Entertainments Tax Commissioner who has

passed a common order in all the 18 revision petitions. The questions is whether in the in circumstances of the case the Petitioner can maintain a

single writ petition.

5. According to the learned Counsel for the Revenue though a common order has been passed by the Entertainments Tax Commissioner in 18

revision petitions, that will not enable the Petitioner to question the validity of the said common order by filing a single writ petition. The case of the

Petitioner is that though originally there were as many as 18 proceedings since the order sought to be quashed is only one, order passed by the

Entertainment Tax Commissioner, it is not necessary for the Petitioner to file as many writ petitions as there were original proceedings.

6. In Mahabirprasad Durgaprasad Vs. B.S. Gupta and Another, , a Division Bench

took view that a composite petition under Article 226 is

maintainable where grounds of attack for all years of assessment to tax are the same and common questions arise for consideration and the orders

of assessment in questions are practically simultaneous. In Chaman Motor Services Vs. Appellate Authority, , it has been held that when orders

passed in various appeals by the appellate authority constituted under the Central Provinces and Berar Motor Vehicles Act, 1939 are inter

connected, the Petitioner is entitled to challenge them by filing one writ petition. But a Division Bench of this Court in Management of Rain Bow

Dyeing Factory Salem and Others Vs. Industrial Tribunal, High Court Buildings, Madras and Another, had taken a different view. In that case on a

reference by the Government for adjudication of various issues relating to wages, dearness allowances, bonus and holidays with pay arising

between 30 industrial establishments and the persons working in those establishments, the Industrial Tribunal passed a common award in relation

to ail the establishments. The question arose whether a single writ petition could be filed by all the aggrieved industrial establishment against the said

award. The Court held, after a detailed consideration of the earlier decisions on the point, that the interests of 30 concerns although similar were

several and distinct and therefore each one of them must file separate writ petitions and a joint petition by all of them was incompetent. In

Khurjawala Buckles Manufacturing Co. Vs. Commissioner, Sales Tax and Another, a Division Bench expressed the view that a writ petition to

quash two assessment orders pertaining to two assessment years or one petition for the quashing of two assessment orders under two different

taxation status even though the Assessee and the assessing authority are the same cannot be entertained. In (1963) 50 ITR 195 (SC) the question

arose as to whether a single appeal can be filed in respect of an order passed in a writ petition relating to 9 assessment orders. In that case one

writ petition was filed challenging the validity of 9 assessment orders and against the orders in writ petition a single appeal was filed before the

Supreme Court. In these circumstances the Supreme Court held that as the matter originated out of one writ petition there was only one

proceedings and not as many proceedings as there were assessment orders, that when an appeal is taken from the judgment of the High Court in such a single petition it is impossible to contend that there are more appeals than one, and that therefore there can he a single appeal against the

order of the High Court passed in one writ petition. The Supreme Court however referred to its two earlier decisions in Lajwanti Sial''s case

(Special Leave Petition No. 673 of 1959) and Krishchand Chellaram''s case 46 and distinguished the same.

7. In Lajwanti Sial''s case (Special Leave Petition No. 673 of 1959), there were number of applications u/s 66(2), of the Indian income tax Act for

reference of the same question. These separate references were dealt with by one judgment of the High Court against which one appeal was taken

to the Supreme Court. When the maintainability of such an appeal was questioned, the Supreme Court held that though a single appeal has been

filed against the High Court''s judgment it was really five appeals, and that a common judgment should be taken to have been delivered in each of

the different reference cases. In Kishinchand Chellaram Vs. Commissioner of Income Tax, Central Bombay, there were four applications by four

different Assessees for reference of three identical questions arising in each assessment case u/s 66 (1) of the IncomeTax Act. There was one

order of reference to the High Court and the High Court treated the case as a single case of reference. When the order of the High Court was

taken in appeal to the Supreme Court by a single appeal it was held that though there was one reference and a single order in that reference by the

High Court it should be taken that there were in fact a number of references and number of orders.

8. I am of the view that the principle of the decision in (1963) 50 ITR 195 (SC) , cannot apply to the facts of this case. As a matter of fact the

decision in that case seems to suggest that the proper test is to find out whether the matter agitated in the writ petition arises out of a single

proceeding or different and independent proceedings. Admittedly in this case there were 18 independent assessment orders and 18 independent

revision petitions before the ultimate revisional authority. Therefore the common order passed by the Respondent should be taken to have arisen

out of 18 revision petitions as per the principle laid down by the Supreme Court in Lajwanti Sial''s case (Special Leave Petition No. 673 of 1959)

and Kishinchand Chellaram Vs. Commissioner of Income Tax, Central Bombay, , Therefore I have to hold that though the order passed by the

Entertainments Tax Commissioner in this case is one, it should be taken to be 18 orders passed in 18 proceedings and that therefore, the

Petitioners cannot maintain a single writ petition. In this view I hold that the Petitioner cannot maintains single writ petition. However, I shall treat

this as a petition filed against the assessment order under the Entertainments Tax Act for the week ending with 3rd November, 1968. In that view

the re-assessment made on the Petitioner for the week ending with 3rd November, 1968 will stand quashed. In other respects the order will stand.

The writ petition is allowed to the extent indicated above. There will be no order as to costs.