
(2008) 05 AHC CK 0195
In the Allahabad High Court

Balaji Rice Industries

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 AWC 2213

Hon'ble Judges : Sushil Harkauli, J;Rakesh Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sushil Harkauli and Rakesh Sharma, JJ.—An objection was raised in this case that the Assessing Officer of the petitioner company is located at Unnao, which is within the territorial jurisdiction of Lucknow Bench of this Court, and therefore, this writ petition is not maintainable at Allahabad. Reliance in support of this objection was placed upon three decisions of the Supreme Court namely, Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and Ambica Industries Vs. Commissioner of Central Excise, and U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others,

2. So far as, the decision of the Supreme Court in the case of Ambica Industries (supra) is concerned, it is concerned with the statutory appeals and the issue was with regard to interpretation of the words "the High Court". The principle enunciated therein will not apply to writ jurisdiction inasmuch as, a writ petition can be filed in the High Court within the territorial jurisdiction of which the whole or even a part of the cause of action has arisen.

3. We do not find any of these three decisions of the Supreme Court to lay down any different proposition of law in respect of the jurisdiction of the High Court under Article 226 of the Constitution of India.

4. Factually, in the present case, the limitation for re-assessment had run out and it was extended by an order of the Additional Commissioner located at

Kanpur, which falls within the territorial jurisdiction of Allahabad. But for that order passed at Kanpur, no re-assessment could have taken place. The passing of that order therefore favours an integral part of the cause of action for filing the present writ petition which challenges the re-assessment including a specific challenge to the said order. Accordingly, the objection about lack of territorial jurisdiction is overruled. No counter-affidavit has been filed by the learned standing Counsel despite the order dated 21.2.2008.

5. As prayed, one month further time is allowed for filing counter-affidavit. An interim order was passed in his case by this Court on 21.2.2008. The writ petition was presented on 19.2.2008. Subsequently, the petitioner has come to know that an ex parte re-assessment order was passed on 18.2.2008 in respect of the assessment year 2004-05 (Central), which has been challenged by means of an amendment application. The amendment application is allowed. Necessary amendment may be incorporated in the writ petition within a week

6. For the same reasons as mentioned in the interim order dated 21.2.2008, the operation and effect of the ex parte reassessment order dated 18.2.2008, Annexure-A 2, to the affidavit supporting the first amendment application will remain stayed till further orders.