
(1969) 09 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1402 of 1963

Bisheshwar Lal

APPELLANT

Vs

Income Tax, Officer

RESPONDENT

Date of Decision : 16-09-1969

Acts Referred:

Income Tax Act, 1922 — Section 28(1)

Citation : (1970) 75 ITR 698

Hon'ble Judges : V.G. Oak, C.J;T.P. Mukerjee, J

Bench : Division Bench

Advocate : B.L. Gupta and Ashok Gupta, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—This petition under Article 226 of the Constitution is directed against penalty proceedings under the Indian Income Tax Act, 1922, ^hereinafter referred to as "the Act"). There was a firm, Rameshwar Lal Bisheshwar Lal, consisting of two partners, Bisheshwar Lal and Rameshwar Lal, who were brothers. The firm was assessed to Income Tax for four assessment years 1944-45, 1945-46, 1946-47 and 1948-49. The assessee-firm successively appealed to the Appellate Assistant Commissioner and the Appellate Tribunal. Both these appellate authorities gave some relief to the assessee for the four assessment years. Between October 5, 1949, and August 10, 1961, the Income Tax Officer, Goida, issued a series of notices to the firm calling upon it to show cause why penalty should not be imposed on the assessee-firm u/s 28(1)(c) of the Act on the ground that the firm concealed its income relevant to the four assessment years. The firm sent several replies to the effect that there was no concealment of income on the part of the firm. Ultimately, on April 19, 1963, Bisheswar Lal filed in this court the present writ petition challenging the penalty proceedings. The petitioner has prayed that the penalty proceedings be quashed.

2. It has been stated in paragraph I of the petition that the firm, Rameshwar Lal

Bisheshwar Lal, was dissolved as far back as the year 1948. This position was accepted in the counter-affidavit filed by the Income Tax Officer, Gonda.

3. The main contention of Mr. Brijlal Gupta, appearing for the petitioner, is that there has been inordinate delay in initiating penalty proceedings. It is pointed out that the notices issued to the assessee-firm u/s 28 of the Act covered a period of 12 years from 1949 to 1961. On the other hand, Mr. Gopal Behari, appearing for the respondent, urged that there is no period of limitation for a proceeding u/s 28 of the Act.

4. In *Henry William Hatton v. Hugh Harris*, [1892] A.C. 547, the House of Lords agreed to correct an accidental omission in a decree after an interval of 39 years. In the present case we are not dealing with any accidental omission. The case of the department is that the assessee-firm deliberately concealed its income.

5. In *Ram Kishan Baldeo Prasad Vs. The Commissioner of Income Tax*, the question referred to this court was :

"Whether, for the assessment year 1945-46, the assessment of which was made in March, 1950, could a penalty be imposed in August, 1957 ?"

6. It was held by this court that, although no period of limitation has been prescribed for imposing a penalty, and a penalty could be imposed as late as August, 1957, propriety required the changed circumstances to be taken into consideration and the responsibility for the inordinate delay should be considered and fastened before levying penalty or upholding it. In that case it was found that the assessee filed its return for the assessment year 1945-46 on July 20, 1949. There was no valid explanation for the delay in filing the return. Thus, in that case, there was clear evidence on the record that the assessee was guilty of laches in filing a return. In the present case there is no clear indication on the record about the alleged concealment of income. We note that the assessee succeeded in persuading the Appellate Assistant Commissioner and the Appellate Tribunal to reduce the quantum of assessment for the four assessment years in question. It thus appears that it was all a question of making an estimate about the income of the assessee for the four assessment years.

7. In *COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.*, it was held by the Orissa High Court that the Act does not contain any provision prescribing a period of limitation for an order of penalty. So, such an order imposing penalty cannot be held to be bad in law merely because of inordinate delay. In that case the matter came before the Orissa High Court upon a reference u/s "66(1) of the Act. An order imposing penalty had been passed by the Income Tax Officer. The question before the High Court was whether that order was bad in law. It was held by the High Court that the order imposing penalty could not be said to be bad in law merely on the ground of delay. In the present case we are not dealing with any order imposing penalty. The question before us is whether the pending proceedings u/s 28(1)(c) of the Act should be allowed to proceed or not.

8. In *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, the Deputy Commissioner of Sales Tax issued a notice under the Bombay Sales Tax Act proposing to revise an order of an Assistant Collector of Sales Tax. The dealer filed before the Bombay High Court a writ petition for getting the notice quashed. The writ petition was dismissed by the Bombay High Court. Desai J. observed on page 393 :

".. .if the legislature permitted the revising authority to issue a notice-and start a proceeding after any lapse of time, we cannot, on the mere ground that it is issued after a long lapse of time, quash the said notice."

9. The dealer took up the matter in appeal before the Supreme Court. The appeal was dismissed by the Supreme Court. It was held that there was no period of limitation for the exercise of revisional powers under the Bombay Sales Tax Act. The case was argued before the Supreme Court largely on the question of limitation. The Supreme Court pointed out that there was no limitation for the exercise of revisional powers under the Bombay Sales Tax Act. The Supreme Court did not lay down the broad proposition that the High Court can never quash proceedings of this nature on the ground that the inordinate delay in initiating such proceedings might be vexatious to the assessee or to the dealer.

10. In *Khemchand Ramdas v. Commissioner of Income Tax* [1934] 2 ITR 216. Aston, A.J.C., observed on page 221 that, in order to be valid, a demand for super-tax, should be made within a reasonable time of the assessment for Income Tax. It was held that an interval of 2 years and 4 months was wholly unreasonable. The decision of the Judicial Commissioners, Sind, was upheld in appeal by the Privy Council. The case is (1938) 6 ITR 414 (Privy Council) . Their Lordships of the Privy Council observed on page 424:

" But it is not true that after a final assessment under those sections has been made, the Income Tax Officer can go on making fresh computations and issuing fresh notices of demand to the end of all time."

11. The present writ petition has been filed by Bisheshwar Lal against the Income Tax Officer, Gonda. A similar case between the same parties came before this court in Civil Misc. Writ No. 325 of 1962. In that case the department complained that the firm had concealed its income relevant to the assessment year 1943-44. Penalty proceedings dragged on for several years. Bisheshwar Lal filed the writ petition for getting the penalty proceedings quashed. The writ petition was allowed by a single judge of this. court. The Income Tax Officer was directed to drop penalty proceedings against Bisheswar Lal. That decision was upheld in Special Appeal No. 866 of 1962.

12. Facts of the present case are similar to those in Writ Petition No. 325 of 1962. The department has made a charge of concealment against the assessee-firm. The firm was dissolved as far back as the year 1948. The penalty proceedings relate to four assessment years from 1944-45 to 1948-49. That period of four years expired on March 31, 1949. These penalty proceedings

dragged on for a period of 14 years up to April, 1963. Some of the notices are u/s 16 of the Excess Profits Tax Act. The first notice was issued as far back as October 5, 1949. The counter-affidavit does not explain why proceedings u/s 28(1)(c) of the Act could not be completed during this interval of 14 years from 1949 to 1963. We agree with the petitioner that the present penalty proceedings are vexatious, and amount to an abuse of the power conferred on the Income Tax Officer u/s 28(1)(c) of the Act. The respondent should not be permitted to continue with these penalty proceedings.

13. The petition is allowed with costs. We quash the various notices that have been issued by the respondent u/s 28(3) of the Indian Income Tax Act, 1922, and Section 16 of the Excess Profits Tax Act. We direct the respondent to drop these penalty proceedings under the Indian Income Tax Act, 1922, and the Excess Profits Tax Act.