
(2008) 02 AHC CK 0244
In the Allahabad High Court

Commissioner of Wealth Tax	Vs	APPELLANT
Gomti Devi Banarsidass Charitable Trust		RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0244

Hon'ble Judges : Sushil Harkauli, J;Sudhir Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sushil Harkauli and Sudhir Agarwal, JJ.—We have heard Sri A.N. Mahajan, learned Standing Counsel appealing for the Department and Sri S.S. Chauhan, Advocate for the respondents.

Following question has been referred to be answered by this Court:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the rectifacatoiy order passed by the W.T.O. u/s 35 of the W.T. Act is illegal and invalid and, therefore, is liable to be quashed?

2. Notice u/s 35(4) of Wealth Tax Act, 1957 (hereinafter referred to as the "Act") was issued by the Wealth Tax Officer (in short W.T.O.) on 25.04.1981 requiring the assessee's presence before him on 29.04.1981. The notice mentioned the reason that there are some calculation mistake which needs rectification. The authorised representative of the assessee appeared before the Assessing Officer on 29.04.1981 and requested him to clarify the nature of alleged mistakes which he proposed to rectify. He said that notice was vague and did not specify any reason which could have been effectively replied by the assessee. However nothing was clarified to him and the matter was adjourned to 04.05.1981 on which date the order was passed by W.T.O. observing that none was present on behalf of the assessee and, therefore, it is evident that he has no answer to the notice.

3. Learned Counsel appearing for the Revenue submitted that the notice since mentioned that there are some calculation mistakes which need rectification, the Tribunal erred in law by holding that the notice was unreasoned, vague and did not contain any specific aspect which could have been replied by the assessee.

4. On the contrary, it is contended by the other side that in the absence of any specific reason contained in the notice, no reasonable opportunity was afforded to the assessee and, therefore, the notice being illegal, has rightly been set aside by the Tribunal.

5. Section 35 of the Act confers power upon the authorities for rectification of mistakes but where the effect of such rectification results in enhancement of assessment or reducing of refund or otherwise increasing the liability, no such rectification is permissible unless the authority concerned has given notice to the assessee giving him reasonable opportunity of hearing. Section 35 (1) and (4) of the Act, relevant for the present purpose, are reproduced as under:

35.(1) With a view to rectifying any mistake apparent from the record

(a) the Assessing Officer may amend any order of assessment or of refund or any other order passed by him;

(aa) a wealth-tax authority may amend any intimation or deemed intimation under subsection (1) of Section 16.

(aaa) the Valuation Officer may amend any order passed by him u/s 16A;

(b) the Joint Director or Joint Commissioner or Director or Commissioner or Joint Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him u/s 18A;

(c) the Joint Commissioner (Appeals) or Commissioner (Appeals) may amend any order-passed by him u/s 23 or Section 23A;

(d) the Commissioner may amend any order passed by him u/s 25;

(e) the Appellate Tribunal may amend any order passed by it u/s 24.

...

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

6. A bare perusal of the provision makes it clear that the assessing authority has no jurisdiction to pass an order allegedly rectifying mistakes if it has the effect of passing an order adverse to assessee namely, increasing his liability or otherwise adversely affecting him unless a notice is given to the assessee and he is given a reasonable opportunity of hearing. The statute nowhere provides any particular

form of notice and in the absence of any prescribed form or the contents of notice, it is sufficient if the authority concerned gives a notice briefly mentioning therein the reason for issuing such notice, which must be of such a nature as to make the person concerned able to understand the issue which he has to reply. It is not doubt true that in absence of any particular requirement under the statute a notice need not be a detailed order giving full particulars, but atleast in brief it must precisely give an idea to the assessee as to what has prompted the authority to issue such notice which needs to be replied by the assessee. Since rectification is permissible on mistakes apparent from the record, it was incumbent upon the authority concerned to atleast mention in the notice in question as to what kind of mistakes he has found in the order which need correction and only thereafter it would have been possible for the assessee to reply the same. The term "reasonable opportunity of being heard" mentioned in Sub-section 35(4) of the Act makes it obligatory on the part of the authority concerned to mention at least such particulars though in brief, of the mistakes which he has noticed and which are apparent on record requiring rectification so that the assessee may be able to understand as to what aspect he has to clarify or if he also finds that such mistake is in fact apparent, he may concede for rectification. Therefore, in order to give a "reasonable opportunity of hearing" to the assessee, the notice must contain such particulars, though in brief, which may enable the assessee to understand the alleged mistakes which need rectification requiring his reply.

7. In *Maharana Mills (Private) Ltd. v. Income Tax Officer, Porbandar* 1959 (36) ITR 359 the Apex Court observed that a notice u/s 35 of the Act must give a requisite opportunity of showing cause to the assessee where the assessment is to be enhanced or refund is to be reduced. It is true that in a given a case if a notice was not given in writing but the authority made assessee aware of the errors/mistakes apparent on record, the matter was discussed with him and thereafter a rectification order was passed, the Apex Court held it would amount to a sufficient opportunity u/s 35 of the Act and merely for the reason that a written notice was not given the rectification order passed u/s 35 shall not be vitiated in law, provided a reasonable opportunity has been given to the assessee. The object of Section 35 of the Act for issuing notice was culled out in the following words:

The object of the provision as to notice in the second sub-section of Section 35 is that no order should be passed to the detriment of an assessee without affording him an opportunity but it cannot be said that the rule is so rigid that if, as a matter of fact, the assessee knows of the proceedings and the matter has been discussed with him then an adverse order would be invalid merely because no notice u/s 63 was given. Of course this postulates that the reasonable opportunity has been given to show cause. Secondly this provision is applicable only where the assessment is enhanced or refund is reduced....

8. In the present case it is not the case of the Revenue that the assessee was

made aware of the nature of calculation mistakes which needed rectification and he had an opportunity to explain the same. On the contrary the record shows that on 29.04.1981 when he appeared on the very first date before the assessing authority, he sought to apprise him the nature of alleged mistakes but the same was not made clear to him. This shows that no reasonable opportunity was afforded to the assessee. The Tribunal, therefore, was justified to hold that the rectification order was passed by the W.T.O. u/s 35 of the Act without issuing a valid show cause notice required thereunder.

9. The question, therefore, is answered against the department and in favour of the assessee.