

(2000) 03 MP CK 0039

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 433 of 1989

Dr. Mrunalinidevi

APPELLANT

Vs

Assistant Commissioner of Wealth-tax and Others

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 17, 23, 24

Citation : (2000) 246 ITR 90

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : J.W. Mahajan, for the Appellant; R.L. Jain, for the Respondent

Judgement

N. K. Jain, J.—This is a petition by an assessee filed under Article 226/ 227 of the Constitution of India seeking issuance of appropriate writ for quashing four notices dated March 23, 1987, (annexures-I, J, K and L), issued by the Assistant Commissioner of Wealth-tax, Indore (respondent No. 1), u/s 17 of the Wealth-tax Act, 1957 (for short, "the Act").

2. It may be noted at the outset that the petitioner-assessee has in response to the said notices filed the returns for the said reassessment undertaken by respondent No. 1, u/s 17(1)(a) of the Act. During those reassessment proceedings an application was filed by the petitioner seeking disclosure of the reasons for which the reassessment was being undertaken by the assessing authority. In reply to the said application, the assessing authority issued a memo dated March 2, 1989 (annexure-R) stating that the reason being the assessment order for the year 1982-83 according to which it had come to notice that certain wealth with the assessee has escaped assessment for the years 1978-79 to 1981-82.

3. The petitioner has assailed the notices annexures I, J, K and L as ab ini-tio void and without jurisdiction. It was contended that the reasons disclosed in the memo annexure R did not provide for a ground to initiate proceedings for

reassessment u/s 17(l)(a) of the Act. It was further contended that the proposed reassessment was barred by limitation, as provided by Section 17A of the Act.

4. The respondents have filed a return in opposition of the averments made in the petition. A preliminary objection is taken as to the tenability of this petition on the ground of existence of alternative remedy.

5. Having heard learned counsel for the parties and considered their pleadings and the documents filed therewith, I am satisfied that this petition should fail on the ground of non-exhaustion of the statutory remedy available to the petitioner. The petition is premature inasmuch as the petitioner has come before this court at the very threshold of the issuance of show-cause notice. It is amusing to note that the petitioner having filed the returns in reply to the impugned notices, has instead of waiting for the final result, rushed to this court under Article 226/227.

6. The Supreme Court in *State of U.P. and another Vs. Labh Chand*, , has held (page 757) :

"When a statutory forum or Tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievances before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well settled."

7. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, , the apex court dealing with the question as to how the discretionary jurisdiction of a High Court under Article 226 of the Constitution was required to be exercised respecting a petition filed thereunder by a person coming before it by-passing a statutory alternative remedy available to him for obtaining redressal of his grievance ventilated in the petition, has held (headnote of AIR 1964 SC 474 of 15 STC) :

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the articles. But the exercise of the jurisdiction is discretionary ; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations . . . Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

8. It is true, that there may be a case where the High Court may be justified in exercising its discretionary jurisdiction under Article 226 even before exhaustion of alternative remedy. The existence of an alternative remedy may not be a

ground for refusing writ of mandamus or certiorari where it appears on the face of the proceedings that the inferior Tribunal has acted without jurisdiction or contrary to the fundamental principles of justice. Although, in the instant case, the petitioner has severely attacked the validity of the show-cause notices, these notices cannot be termed as illegal per se or without jurisdiction. The petitioner having already submitted returns should wait for the final outcome of those assessments. The Act of 1957 provides a complete code for redressal of grievances of the assessee inasmuch as the orders passed by the Assessing Officer can be challenged in appeal firstly before the Deputy Commissioner (Appeals) and then before the Appellate Tribunal, under Sections 23 and 24 of the Act. There is also a provision for revision by the Commissioner and reference can also be made to this court on law points.

9. In the result, I decline interference and dismiss the petition leaving the petitioner free to have recourse to the provisions of the Act of 1957 for redressal of his grievances. The stay granted earlier shall also stand vacated. No order as to costs.