
(2008) 04 GAU CK 0026
In the Gauhati High Court

Gauhati Roller Flour Mills Ltd.	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Wealth Tax Act, 1957 — Section 24(5)

Citation : (2009) 222 CTR 656 : (2009) 308 ITR 368 : (2009) 181 TAXMAN 86

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Dr. B.P. Todi, learned senior counsel for the writ petitioner and Mr. U. Bhuyan, learned standing counsel for respondents Nos. 1 to 4.

2. By this petition, the assessee has challenged the order dated February 23, 2001, passed by the Income Tax Appellate Tribunal in Wealth-tax Appeals Nos. 18, 19, 20, 21, 22, 23 (Gauhati)/1994 in respect of different assessment years starting from 1984-85 to 1989-90. The assessee did not participate in the proceedings before the learned Tribunal and the order dated February 23, 2001, partly allowing the appeals came to be passed in the absence of the representative of the assessee who was engaged to appear for the Tribunal.

3. The assessee thereafter filed a miscellaneous application on June 25, 2001, u/s 24(5) of the Wealth-tax Act, 1957, read with rules 24, 25 of the Income Tax (Appellate Tribunal) Rules, 1963, for setting aside the ex parte order dated February 23, 2001.

4. In the said miscellaneous application, it was contended by the assessee that the date of hearing of the appeals was fixed on July 2, 1998, and the said date of hearing was intimated to the assessee vide notice dated June 9, 1998. But as the assessee's counsel could not be present on the fixed date because of certain personal inconvenience, an application for adjournment was filed seeking

adjournment of hearing of the appeals.

5. It is further mentioned in the miscellaneous application that thereafter no further intimation regarding the adjourned date of hearing of the appeals was received by the assessee for which the assessee remained absent in the hearing. On this count, it was, submitted that a reasonable opportunity of being heard in the appeal was not made available to the assessee and, therefore, it was prayed through the miscellaneous application that the order dated February 23, 2001, passed in the said appeals by the learned Tribunal be set aside and the assessee be permitted to participate in a fresh hearing of the appeals in question.

6. Since the assessee in their miscellaneous application had claimed that it had not received notice of fresh date of hearing, an enquiry with the postal authorities was made by Registry of the Tribunal and vide communication dated September 27, 2001, the postal authorities informed that the registered notice, specifying the adjourned date of hearing, was delivered to the assessee on February 13, 2001.

7. Accordingly, on consideration of the miscellaneous application dated June 25, 2001, vide the impugned order dated January 10, 2002, the learned Tribunal dismissed the said application filed by the assessee. The grounds stated for dismissal of the application, as is revealed from the order dated January 10, 2002, of the learned Tribunal was that since the postal department has confirmed the service of notice indicating the adjourned date of hearing, the assessee cannot have any grievance for non-receipt of the notice as the notice was concluded to have been duly served on the assessee. The duty of the assessee's counsel to enquire about the adjourned date of hearing as the earlier date of hearing was adjourned at the request of the assessee's counsel, who had personal difficulty in appearing on the stipulated date, was also noted in the order dated January 10, 2002, by the learned Tribunal.

8. Another reason cited by the learned Tribunal for declining to entertain the miscellaneous application is that since the appeals were partially allowed and the matters were remanded to the Assessing Officer, the assessee would have an opportunity of having their say in the matter before the Assessing Officer and this was recorded as an additional reason for non-entertainment of the miscellaneous application dated June 25, 2001.

9. Dr. B.P. Todi, senior counsel appearing for the assessee, refers to the provisions contained in Rule 19 of the Income Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as "the Rules"), to submit that the Tribunal is required to notify the date of hearing of the appeal. Since the date of hearing of the appeal cannot be said to be notified because of non-receipt of the notice by the assessee, it is a fit case for interfering with the impugned orders dated January 10, 2002, and February 23, 2001, and for directing fresh hearing of the wealth-tax appeals with the participation of the counsel for the assessee.

10. Learned senior counsel further submits that the system of publishing the

cause list by the learned Tribunal is a recent phenomenon and at the relevant point of time, there was no system of publishing the cause list of the cases by the Appellate Tribunal. Under such circumstances one of the reason cited for not considering the application dated January 22, 2001, is not tenable in law and the same is required to be interfered with.

11. It is also contended on behalf of the assessee that providing an opportunity to participate in the appeal hearing before the learned Tribunal is a pre-requisite for a fair adjudication and since the assessee has been denied such an opportunity because of non-receipt of notice notifying the date of adjourned hearing, it is an appropriate case for directing fresh adjudication of the appeals by the learned Tribunal.

12. Dr. Todi, senior counsel has referred to the Allahabad High Court's decision reported in Ilyas Ahmad Body Maker Vs. Commissioner, Sales Tax, to contend that the Tribunal had the responsibility to notify even the adjourned date of hearing in order to afford a reasonable opportunity to the assessee and that the appeals could not have been decided on the merits without participation of the assessee who could not participate because of non-service of notice by the learned Tribunal.

13. Mr. U. Bhuyan, learned Counsel for the Revenue on the other hand, submits that it has been confirmed from the communication dated September 27, 2001, received from the postal authorities, that the notice from the Tribunal indicating the adjourned date of hearing was delivered to the assessee on February 13, 2001, and since the postal department would not have any reason to misinform the Tribunal with regard to the delivery of the notice of the learned Tribunal, the assessee cannot claim that a reasonable opportunity was denied to them to participate in the appeal proceedings, because of non-receipt of intimation about the date of hearing.

14. Accordingly, it is contended by Mr. Bhuyan, that this case ought not to be entertained since no fault can be attributed to the learned Tribunal for the absence of the assessee in the appeal of hearing and it cannot be treated to be a case of denial of reasonable opportunity to the assessee.

15. On examination of the Income Tax (Appellate Tribunal) Rules, 1963, and more particularly Rule 19 referred to and relied on by the learned Counsel for the assessee, it is seen that the said rule which requires notifying the parties specifying the date and place of hearing is referable to the first notice from the Tribunal on entertainment of an appeal preferred by the Revenue and obviously in this case the said requirement of Rule 19 have been complied with. In the miscellaneous application dated June 25, 2001, itself the assessee clearly admits the receipt of the notice dated June 9, 1998, fixing the date of first hearing on July 2, 1998. However, on the fixed date, at the request of the assessee the hearing was adjourned. For such an adjourned date of hearing, I am of the opinion that the provisions of Rule 19 of the Income Tax (Appellate Tribunal)

Rules, 1963, does not apply.

16. It is provided under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963, that the Tribunal may dispose of an appeal ex parte on failure of the assessee to appear and participate in the said proceedings provided of course the Tribunal is also given the power that if afterwards the assessee is satisfied that there are sufficient cause for his non-appearance in the appeal hearing, an order setting aside the ex parte order may be made by the Tribunal and the appeal be heard afresh.

16. The assessee in the instant case filed the miscellaneous application on June 25, 2001, requesting for exercise of power under proviso 2 to Rule 25 of the Rules. The learned Tribunal in considering the grounds taken in the miscellaneous application and also on consideration of the certification of the postal department certifying that the notice of the adjourned date of hearing was served on the assessee, declined to exercise its power provided under proviso 2 to Rule 25 of the Income Tax (Appellate Tribunal) Rules, 1963. While taking the said view, the learned Tribunal noted that the assessee could not bring forward any material on record to controvert the certification of the postal authorities with regard to serving of notice of hearing on the assessee by the learned Tribunal.

17. It is undoubtedly provided under Sub-section (5) of Section 24 of the Wealth-tax Act, 1957, that the Appellate Tribunal would provide an opportunity to the parties of being heard before adjudicating an appeal. The Income Tax (Appellate Tribunal) Rules also provides for the mode and manner of serving of such notice by the Tribunal. In the instant case it is found that the Tribunal cannot be faulted for the absence of the assessee in the appeal hearing as the Tribunal took all requisite steps to ensure that an opportunity of being heard is made available to the assessee.

18. Although a complaint regarding maintainability of the present writ petition has been taken by the counsel for the Revenue by referring to the provisions of Section 27A of the Wealth-tax Act, 1957, I am of the view that the said objection is not required to be answered in the instant case as alternative remedy by way of an appeal under Sub-section (2) of Section 27A of the Act would lie before the High Court (as the National Tax Tribunal is yet to be constituted) only when an appeal u/s 27A of the Act involves a substantial question of law. Since the present writ petition is being dismissed on the merits, the objection raised on behalf of the Revenue with regard to maintainability of the writ petition on the ground of alternative remedy, is not being answered in the present order.

19. In view of the above discussions, this writ petition is found devoid of merit and the same is accordingly dismissed.

20. The interim order, if any, shall stand vacated.