
(1968) 04 AHC CK 0026
In the Allahabad High Court
Case No : Special Appeal No. 866 of 1962

Income Tax Officer

APPELLANT

Vs

Bisheshwar Lal

RESPONDENT

Date of Decision : 23-04-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 28

Citation : (1970) 76 ITR 653

Hon'ble Judges : W. Broome, J; H.C.P. Tripathi, J

Bench : Division Bench

Advocate : Gopal Behari, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

W. Broome, J.—This special appeal is directed against the order of Brijlal Gupta J., dated July 19, 1962, by which he allowed Civil Miscellaneous Writ Petition No. 325 of 1962, and issued a direction to the income tax authorities not to impose a penalty on the petitioner, Risheshwar Lal, in respect of the assessment for the year 1943-1944.

2. The assessment in question was completed on June 24, 1944, and on the same date a notice u/s 28 of the Income Tax Act of 1922 was issued, calling upon the assessee to show cause why a penalty should not be imposed upon him for concealment of income in respect of his partnership firm. The petitioner (the present respondent) sent a reply to this notice on October 12, 1944, after which nothing was done by the department for 12 years. Then on April 16, 1956, another notice was issued to Bisheshwar Lal u/s 28 of the Act, to which he again sent a reply on June 11, 1956, pointing out, inter alia, that the firm in question had been dissolved in the meantime in the year 1948. Again nothing further was done for another three years, but on September 7, 1959, a third notice was issued requiring the petitioner to show cause against the imposition of the penalty, followed by a fourth notice on February 5, 1960, and a fifth on August

10, 1961. Eventually, the petitioner having failed to get any relief from the Income Tax authorities, filed the writ petition in January, 1962.

3. Mr. Gopal Behari, who appears on behalf of the appellant Income Tax Officer, has raised the following three points :

(1) That the petitioner was not entitled to any writ because he had filed his writ petition with undue delay.

(2) That the writ petition should have been dismissed because the petitioner had an alternative remedy.

(3) That even admitting all the facts alleged by the petitioner, the proceedings taken against him u/s 28 of the Income Tax Act could not be said to be without jurisdiction and, consequently, should not be interfered with by this court by the issue of any writ.

4. It is true that the petitioner was guilty of a certain amount of delay in filing this writ petition ; but as pointed out by the learned single judge, the Income Tax authorities had lulled the petitioner into a false sense of security by their continued inaction and, consequently, he did not feel any necessity for coming to this court earlier. In any case, whatever view may be taken, the fact remains that the learned single judge has condoned the delay; and we are reluctant to interfere in special appeal with the single judge's exercise of discretion in such matters.

5. Similar is the case with the plea of alternative remedy, Mr. Gopal Behari suggest that the petitioner should have allowed the Income Tax Officer to impose the penalty and should then have gone up in appeal, as provided under the Act. But, in the peculiar circumstances of this case, we feel that the petitioner was justified in preferring to adopt the more efficacious remedy of coming to this court with a writ petition. We note, moreover, that even despite the existence of the alternative remedy, the learned single judge has seen fit to issue the writ; and again we are reluctant to interfere in special appeal with the single judge's exercise of discretion in such matters.

6. The last point is the most important, Mr. Gopal Behari's contention is that, since no period of limitation is provided in the Act for the issue of a notice u/s 28, the issue of fresh notice by the Income Tax authorities to the petitioner in the year 1956, after having taken no action for 12 years on the original notice issued in 1944, would be fully within jurisdiction and valid, and no interference by way of writ would be called for, even if it was felt that the authorities had acted somewhat unfairly and inequitably. Having given our earnest consideration to this question, however, we are of opinion that Mr. Gopal Behari has overstated his case. Even though no period of limitation is prescribed by the Act for the issue of the notice, it is clear that the notice has to be issued within a reasonable time--vide MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II (V), KANPUR., and In Re: Raja Rajendra Narayan Bhanja Deo of Kanika, To hold that a notice for which

no period of limitation has been prescribed can to issued after the lapse of any time whatsoever, would lead to absurd results, for it would mean that a notice might issue to an assessee after the lapse of 50 or even 100 years, when all the evidence originally in his possession that might enable him to show cause against the imposition of penalty might well have disappeared. We are satisfied, therefore, that when a notice regarding penalty is issued u/s 28 of the Income Tax Act, 1922, after an unreasonable lapse of time, it amounts to an abuse of power and the proceedings can certainly be quashed by a writ issued by this court. The answer to the question of what is a reasonable time will of course depend on the peculiar facts and circumstances of each case. In the present case we are fully satisfied that the time which lapsed between the assessment (accompanied by the original notice) of 1944, and the notice issued in 1956, in the present case was not a reasonable time. As pointed out by the learned single judge, there could be some justification for the Income Tax department staying its hands up to the year 1949, when the appeal against the assessment was finally decided, but between 1949 and 1956, there is not the least suggestion of any valid excuse for inaction on the part of the department.

7. We, therefore, see no merit in the special appeal, which is accordingly dismissed with costs,

Appeal dismissed.