
(1977) 06 CAL CK 0015
In the Calcutta High Court
Case No : C.R. No. 165 (W) of 1976

Jyoti Prakash Mitter

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-06-1977

Acts Referred:

Income Tax Act, 1961 — Section 153, 153(1), 271, 271(1), 274

Citation : (1978) 112 ITR 378

Hon'ble Judges : Amar Nath Banerjee, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Balai Lal Pal, Ajit Kumar Sengupta and Sailendra Nath Datta, for the Respondent

Judgement

Amar Nath Banerjee, J.—In this application the petitioner has prayed for a writ in the nature of mandamus commanding the respondents to act according to law and to cancel and/or rescind and/or withdraw the notices dated January 14, 1975, issued u/s 274 read with Section 271 of the Income Tax Act and all assessments, if any, and all proceeding thereunder for the assessment years 1967-68, 1968-69 and 1969-70 and the purported notices dated October 10, 1974, u/s 131 of the Act and also to cancel and/or rescind the said purported warrant of authorization u/s 132 of the Income Tax Act. He has also asked for a writ in the nature of certiorari calling upon the respondents to send the records of the case together with the notices for the aforesaid years and warrant of authorization may be quashed. There are also prayers for writ in the nature of prohibition and interim injunction. It appears that on August 30, 1974, a search of the petitioner's residences at 8, Mandeville Gardens, Calcutta, was made by the Income Tax department at the instance of the respondent No. 3, Commissioner of Income Tax, West Bengal III, who purported to act u/s 132 of the Income Tax Act, 1961, and signed the warrant of authorization for the said search. The search in the house of the petitioner led to certain publication in certain newspapers which according to the petitioner were malicious and false. The search was followed by enquiries by the Income Tax department about the

affairs of the petitioner. Ultimately, the petitioner received notices u/s 274 read with Section 271 of the Income Tax Act, 1961, issued by the Income Tax Officer, "F" Ward, District--III(I), Calcutta, regarding the proceeding for levy of penalty in respect of the assessment years 1967-68, 1968-69 and 1969-70. The notices issued by the Income Tax Officer are dated January 14, 1975. In the said notices it was stated that the penalty proceedings were being referred to the Inspecting Assistant Commissioner of Income Tax according to Sub-section (2) of Section 274 of the Income Tax Act. The Inspecting Assistant Commissioner of Income Tax also issued similar notices dated January 15, 1975. Now, the petitioner is challenging the issue of such notices as illegal, mala fide and invalid. The petitioner appearing in person took two points regarding such penalty proceedings. His first point was that there could not be any such penalty proceedings without assessment. It was also contended before me that the assessment proceedings were made ex parte and without notice to him. His second point was that, in any event, such penalty proceedings were barred by limitation.

"Whereas in the course of proceedings before me for the assessment year 1967-68, it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income and whereas the penalty proceedings have to be referred to the Inspecting Assistant Commissioner of Income Tax according to Sub-section (2) of Section 274 of the Income Tax Act, 1961, you are hereby informed that the case for levy of a penalty under Clause (c) of Sub-section (1) of Section 271 is being referred by me to the Inspecting Assistant Commissioner of Income Tax, Range III, Calcutta. Further proceedings in regard to the levy of penalty will take place before the said Inspecting Assistant Commissioner of Income Tax as provided in Sub-section (2) of Section 274."

2. The Inspecting Assistant Commissioner also issued notices dated January 15, 1975, to the petitioner. The notice issued by the Inspecting Assistant Commissioner runs as follows :

"Whereas the Income Tax Officer, "F" Ward, Dist. III(I), Calcutta, has under Sub-section (2) of Section 274 of the Income Tax Act, 1961, referred your case to me in connection with the penalty proceedings under Clause (c) of Sub-section (1) of Section 271 and whereas it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income for the assessment year 1967-68.

You are hereby requested to appear before me at 11-30 a.m. on February 26, 1975, and show cause why an order imposing a penalty on you should not be made u/s 271(1)(c) of the said Act. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c)."

3. It will appear from paragraphs 14 and 17 of the affidavit sworn by the respondent-income tax Officer that on the basis of the materials in his possession he was prima facie satisfied that the petitioner had concealed the particulars of his income and furnished inaccurate particulars of such income for the assessment years 1967-68, 1968-69 and 1969-70. It has appeared in paragraph 17 of the affidavit that for the assessment year 1967-68, the petitioner filed a return on 6th October, 1971, disclosing his income from pension only. In the course of investigation it has been found as alleged that the petitioner, amongst others, concealed particulars of his income for the said assessment years from his profession, the income from interest and the notional income from fixed deposits. There were similar suppressions with regard to the returns filed for the assessment years 1968-69 and 1969-70. The returns for the said two assessment years were also filed on 6th October, 1971.

4. Now, the grievance of the petitioner is that since the assessments for the aforesaid three years are still pending and since all the enquiries and investigations by the Income Tax Officer have been made without notice to him and behind his back the said officer was not entitled to initiate any penalty proceedings, far less to refer such proceedings to the Inspecting Assistant Commissioner on the footing that the aggregate amount of concealed income would exceed twenty-five thousand rupees. In my view, there is no substance in the aforesaid contention of the petitioner. The Income Tax Act, 1961, does not contemplate initiation of penalty proceedings on the completion of the assessment proceedings. It is true that no penalty can be imposed unless and until assessment proceedings are completed. But there is a lot of difference between initiation of penalty proceedings u/s 271 of the Act and imposition of penalty thereunder. Under sub-section (1) of Section 271 of the Income Tax Act, if the Income Tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income he may direct that such person shall pay by way of penalty as mentioned in the aforesaid section. The words "in the course of any proceedings" as occurring in Sub-section (1) of Section 271 of that Act can only indicate that such initiation of penalty proceedings can be made during the pendency of any proceedings under the Act. It is also apparent from Section 271 of the Act that it does not require any notice to show cause to be served on the petitioner before initiation of such penalty proceedings. The assessee is entitled to be heard before imposition of any penalty. Section 274 of the Act lays down the procedure to be followed in the matter of imposition of penalty. Sub-section (I) of Section 274 lays down that no order imposing a penalty under Chapter XXI of the Income Tax Act shall be made until the assessee has been heard or has been given a reasonable opportunity of being heard. It is only the prima facie subjective satisfaction of the Income Tax Officer in the course of any proceedings under the Income Tax Act which is required for initiation of a penalty proceeding u/s 271 of the Act. In this connection, I may refer with profit to the Supreme Court decision in the case of

D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat, II Ahmedabad, . In this case, the notice u/s 271(1)(c) of the Act was issued after the completion of assessment proceedings. It was held by the Supreme Court that there is no force in the submission made that the Income Tax Officer before feeling satisfied regarding the necessity of initiating proceedings for imposition of penalty and before issuing the consequential notice should have issued another notice to the assessee and held preliminary enquiry regarding the necessity of initiating proceedings. Such a course would result in mere duplication to the procedure without any advantage to the party. A similar contention was advanced in a case relating to initiation of proceeding u/s 34 of the Indian Income Tax Act, 1922, and was repelled by the Judicial Committee in the case of Commissioner of Income Tax v. Mahaliram Ramjidas [1940] 8 ITR 442 . The principle of law as laid down in the said two cases are sufficient to negative the contention of the petitioner that there can be no initiation of penalty proceedings without a preliminary enquiry and without serving a notice on him regarding the proposed initiation of such proceedings or before the completion of the assessment proceedings for the years concerned.

5. This brings us to the last question of limitation. Section 153 of the Income Tax Act, 1961, deals with the time limit for completion of assessment and reassessment. According to the petitioner, the present assessment proceedings for the years 1967-68, 1968-69 and 1969-70 are all barred under the provisions of Section 153(1)(c) of the Act. I am unable to agree with such contention. The case of the petitioner, as it appears, falls within Clause (c) of Sub-section (1) of Section 271 of the Act. It is being alleged by the Income Tax department that the petitioner has concealed the particulars of his income or furnished inaccurate particulars of such income for the aforesaid three assessment years. That being the position, Clause (b) of Section 153 of the Act will be applicable and the period of limitation will be the expiry of eight years from the end of the assessment years concerned. That being so, it could not be said that the initiation of the penalty proceedings for the years concerned is barred by Section 153(1)(a) of the Act as contended by the petitioner. I do not also agree with his contention that Clause (b) of Section 153 of the Act can be availed of only when the assessments have been completed within the time limit as mentioned in Clause (a). It should be noticed that Clauses (a), (b) and (c) of Sub-section (1) of Section 153 are disjunctive. The word "or" occurs in between the Clauses.

6. With regard to the contention of the petitioner that there was an improper reference by the Income Tax Officer to the Inspecting Assistant Commissioner without a finding that penalty would exceed a sum of twenty-five thousand rupees, I may make a reference to Section 274 of the Income Tax Act, which was amended with effect from April 1, 1971. Sub-section (2) of Section 274 is as follows :

"Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section the amount of

income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of Rs. 25,000, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

Now, therefore, the question is whether without determination of the amount of income of assessment, such a reference can be made to the Inspecting Assistant Commissioner. I have already pointed out that the initiation of penalty proceeding can be made in the course of proceedings under the Income Tax Act and that initiation of such a proceeding is not to wait till the completion of the assessment. Having regard to such position and also having regard to the averments made by the Income Tax Officer in paragraphs 14 and 17 in his affidavit, I do not think that the Income Tax Officer did anything wrong in referring the penalty proceeding to the Inspecting Assistant Commissioner before completing the assessment for the years concerned. In any event, this has not caused any prejudice to the petitioner.

7. We may now come to the last argument made by the petitioner with regard to myself being bound by a Bench decision of this court in Crl. Rev. Nos. 242-43 of 1975, decided on 30th July, 1975 [Jyoti Prakash Mitter Vs. Haramohan Chowdhury,]. I was also a party to that decision. It related to the issue of process against the petitioner u/s 277 of the Income Tax Act, on the complaint by the Income Tax Officer. The complaint related to the assessment years 1967-68 and 1968-69 along with three other years. The proceedings were quashed on the ground that those were premature. An appeal against such decision has been taken to the Supreme Court and is pending. The prosecution u/s 277 of the Income Tax Act is different from a penalty proceeding u/s 271 read with Section 274 of the Act. Moreover, in that case it was held that if the assessee be prosecuted first and then the penalty proceeding is started, the assessee is deprived of the benefit of Section 279(1A) of the Income Tax Act. Therefore, any observation made in that decision with regard to the penalty proceedings are obiter and it was not necessary for the court to go into the question whether the penalty proceedings can also be initiated before the completion of the assessment. That being the position, I do not think that the said Bench decision will be of any help to the petitioner in this case. I also do not find anything wrong in the notices dated October 10, 1974, u/s 131 and warrant of authorization u/s 132 of the Income Tax Act. In fact the petitioner did not make any argument on them. There is thus no substance in this rule.

8. In the result, the rule stands discharged. All interim orders stand vacated. No order made as to costs.

9. On the prayer of the petitioner appearing in person the stay of the operation of the judgment for six weeks is allowed.