
(2005) 07 MP CK 0071
In the Madhya Pradesh High Court

Kamal Kumar Pradeep Kumar	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 11 VST 721

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By filing this writ under Article 227 of the Constitution of India the petitioner seeks to challenge the appellate order dated December 17, 2004 (annexure P/7) passed by the Commercial Tax Appellate Board in three appeals.

2. By the impugned order the cases have been remanded to competent assessing authority for making assessment in the cases of petitioner under the provisions of the M.P. Commercial Tax Act, 1994. It is these remand orders which are sought to be impugned by the petitioner in this writ.

3. Heard A.K. Sethi, learned Counsel for petitioner, and Shri AS. Kutumbale, learned AAG, for respondents.

4. Having heard learned Counsel for the parties and having perused the record of the case I find no substance in this writ. It is accordingly dismissed in limine.

5. Firstly, remand order being perfectly in accordance with law. No interference in the remand order is called for. Secondly even the petitioner has not seriously challenged the remand order in this writ. Thirdly, as a consequence of remand the case has to go back to the competent assessing authority to make assessment for the period in question.

6. I am unable to appreciate the submission of learned Counsel for the petitioner when he contended that while remanding the case, the appellate authority, i.e.,

Board had no jurisdiction to give any direction to that authority against whose order the appeal was not filed. In other words the submission as I understood was that the appellate authority can while remanding the case give direction to that authority against whose order the appeal was filed and in which the remand was made. According to learned Counsel since in this case the impugned direction to make assessment after remand is not to the same assessing authority against whose order the appeal was filed but it is to an altogether new assessing officer and hence it is not permissible. As observed supra, I am not impressed by this submission which has no merit.

7. In this case, the original assessment was made by an authority (A.O.) who was held to have no jurisdiction to assess. It was for this reason that the direction is issued to that A.O. who has jurisdiction to make the assessment. Indeed the assessee cannot escape their liability to get themselves assessed. The appellate authority has full power to send the case to a proper assessing authority who is invested with the assessing powers to make assessment in the case of petitioner.

8. I am, therefore, of a considered view that this petition has no merit. It is accordingly dismissed in limine. The assessing authority should now ensure expeditious disposal of assessment case of the petitioner.