

(2001) 04 MP CK 0029

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 413 of 2000

New Amir Iron Works and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Income Tax Act, 1961 — Section 226, 226(3)

Citation : (2001) 171 CTR 314 : (2001) 252 ITR 663 : (2001) 4 MPHT 401 :
(2001) 3 MPLJ 463 : (2002) 120 TAXMAN 517

Hon'ble Judges : Shambhoo Singh, J; Jayant Govind Chitre, J

Bench : Division Bench

Advocate : S.C. Bagadia, instructed by D. Chhabra, for the Appellant; Patankar, C.R. Karnik and S.G. Gaikwad, PRO, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

Shri Bagadia placed reliance on the judgment of the Supreme Court in the matter of Beharilal Ramcharan v. Income Tax Officer, Spl. Circle "B" Ward, Kanpur and Anr., reported in (1981) 131 ITR 29 and submitted that it was the duty of PRO to follow the guidelines given by the Supreme Court by its observations in the judgment of Beharilal's case (supra). Shri Bagadia submitted that learned Single Judge has not taken into consideration these observations which are binding on every Court and every judicial and quasi-judicial authority. He submitted that on account of this omission on the important aspect the judgment which has been pronounced by the learned Single Judge will have to be treated as incorrect and illegal. He submitted that it be set-aside by passing appropriate judgment and order.

Shri Patankar vehemently opposed the submissions of Shri Bagadia and submitted that the learned Single Judge has considered the observations of the Supreme Court in Beharilal's case (supra) and has come to a right conclusion

after adverting its attention to necessary facets of the case. He submitted that sufficient opportunity was given to the appellants and, therefore, it cannot lie in its mouth to say that there has been failure of justice and he has been unnecessarily put to liability of paying the tax and resultant consequences. He submitted that appeal be dismissed. A short point stands for adjudication and, therefore, with the concurrence of the parties it has been decided finally at motion hearing stage.

In *Biharilal's* case (*supra*) the Supreme Court has given in detail the criteria which is to be followed while considering an affidavit of the assessee in view of the provisions of Section 226 of Income Tax Act, 1961 (hereinafter referred to as the "Income Tax Act" for convenience). The Supreme Court held in that matter that the appellant's accountant was competent to state on oath as to what was the true state of the account between the appellant and B. Ltd. and since an affidavit containing the statement on oath made by the accountant was filed on behalf of the appellant in support of its objection, the requirement of clause (vi) of Section 226(3) was satisfied. It further held that "after receipt of the affidavit of the accountant the ITO had to give notice and hold an enquiry for the purpose of determining whether or not the statement on oath was false in any material particular. Since the decision reached by the ITO that the statement on oath made by the accountant was false as set out in the notices dated December 31, 1966, and January 11, 1967, had been arrived at without giving such notice or holding such an inquiry, the decision was invalid and the notices dated December 31, 1966, and January 11, 1967, had to be quashed."

The Supreme Court in that matter held that "Under Clause (vi) of Section 226(3) the discovery by the ITO that the statement on oath made on behalf of the garnishee is false in any material particular has the consequence of imposing a personal liability for payment on the garnishee and it must, therefore, be a quasi-judicial decision preceded by a quasi-judicial inquiry involving observance of the principles of natural justice. The ITO cannot subjectively reach the conclusion that in his opinion the statement on oath made on behalf of the garnishee is false in any material particular. He would have to give notice and hold an inquiry for the purpose of determining whether the statement on oath made on behalf of the garnishee is false and in which material particular and what amount is in fact due from the garnishee to the assessee and in this inquiry he would have to follow the principles of natural justice and reach an objective decision. Once a statement on oath is made on behalf of the garnishee that the sum demanded or any part thereof is not due from the garnishee to the assessee, the burden of showing that the statement on oath is false in any material particular would be on the revenue and the revenue would be bound to disclose to the garnishee all such evidence or material on which it proposes to rely and it would have to be shown by the revenue on the basis of relevant evidence or material that the statement on oath is false in any material particular and that a certain definite amount is due from the garnishee to the assessee. Then only can personal liability for payment be imposed on the garnishee under clause (vi)."

While justifying the judgment and order which is being assailed, Shri Patankar pointed out Paragraphs 7, 10 and 11 of the judgment passed by learned Single Judge. In Paragraph 7, the learned Judge has pointed out the decision of the Supreme Court in the case of Biharilal (supra) as reliance was placed on the said judgment by the appellants and attention of the learned Single Judge was invited to these observations of the Supreme Court. However, by hearing the submissions advanced on behalf of the Revenue, the learned Judge concluded that "If one examines the proceedings initiated by the Revenue against the petitioner u/s 226(3), which eventually culminated in the impugned order dated 10-3-99, it is clearly discernable that Revenue discharged its factual burden by holding that an affidavit filed by the petitioner is false or/and not true. More that is required to be proved by the Tax Recovery Officer u/s 226(vi) is that the statement made on oath by the person to whom the notice is served u/s 226(3) is false in any material particulars. Once this material is proved, then it follows that such person becomes personally liable to the extent of his own liability to the assessee or to the extent of the assessee's liability for any sum due under the Act whichever is less."

Further in Paragraph 11, the learned Judge opined "If one peruses the order dated 10-3-99 passed by the TRO then it would clearly appear that he has undoubtedly kept in consideration the requirement of Section 226(vi) *ibid* while holding an inquiry and then passing the impugned order. This was not a case where no notice was issued to petitioner or that no inquiry was held before impugned order was passed. On the other hand, it clearly appears that an elaborate inquiry was held by TRO subsequent to petitioners filing an affidavit only with a view to find out whether any false statement on facts of the case on any material particulars is made by the petitioner. It is essentially for this purpose, the inquiry was initiated, several dates were fixed in which petitioner filed his account books, correspondence relating to transaction in question etc., to support his statement made on oath. The TRO after examining the entire record filed by the petitioner and also taking into account entire factual aspects of the case came to a conclusion, that the statement made by the petitioner on oath is false and it clearly proves on account books and correspondence that petitioner has to pay a sum of Rs, 27,30,168.20 paise to the respondent No. 6. Accordingly by passing a very reasoned order meeting and taking into account every possible factual aspect, several entries in books of account, nature of transaction, advance amount paid by respondent No. 6 to petitioner, held the statement to be false and amount mentioned in the order to be payable."

But after perusing the record it will have to be pointed out that no show-cause notice was issued to the appellant pointing out the particular portion of the affidavit which according to TRO was false and inviting his attention to it and to afford him the sufficient opportunity of explaining it. Not only that, it was the duty of TRO to bring it to the notice of the appellants that particular type of material of evidence was available with him which was falsifying the particular portion of the affidavit sworn in and, thereafter it was necessary for TRO to

determine the amount which the appellant was holding for M/s. Janak Intermediates Ltd., as garnishee and for that purpose a quasi-judicial inquiry was very much necessary and by conducting an inquiry, as indicated by the Supreme Court in Biharilal's case (supra). Because it was necessary on the part of TRO to determine the liability of the appellants to pay a particular sum to the Revenue as determined to have been held by him as garnishee and belonging to M/s. Janak Intermediates Ltd. No doubt, TRO has taken lot of pains in doing exercise but on account of following a wrong formula, his toiling hours have not become fruitful. He cannot be blamed for that because perhaps indicative and directive observations of the Supreme Court in Biharilal's case might not have come to his notice. Therefore, his pains taking efforts were misdirected and, therefore, instead of reaching to the . meaningful goal, he misled himself to an erroneous position and passed an order which was assailed by the appellants by filing the writ petition which was ultimately decided by the learned Single Judge.

The learned Single Judge unfortunately lost sight of the impact of the observations of the Supreme Court in Biharilal's case (supra) and, therefore, he landed in error of dismissing that writ petition.

In the fitness of the things and as it was indicated by the Supreme Court in Biharilal's case (supra) it is necessary now that the matter should be remanded back to the Revenue/appropriate authority for the purpose of conducting an inquiry in view of the directions given by the Supreme Court in Biharilal's case as to how the matter is to be dealt with in view of the provisions of Section 226(3) of the Income Tax Act. For avoiding the delay and for avoiding the prejudice to the Revenue, this matter has been decided finally. The matter stands remanded back to the Revenue/concerned authorities for an inquiry to be conducted in view of the provisions of Section 226(3) of the Income Tax Act by setting aside the judgment and order passed by the learned Single Judge which has been assailed by this appeal.

Appeal is allowed with no order as to cost.