
(1975) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2909 to 2912 of 1973

P.N. Balasubramanian

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 14-10-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 142(1), 143, 143(2), 144, 146

Citation : (1978) 112 ITR 512

Hon'ble Judges : A. Sambasiva Rao, Acting C.J.;Chennakesav Reddy, J

Bench : Division Bench

Advocate : Y.V. Anjaneyulu, for K.N. Raju and P.V. Raghavendra Rao, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Chennakesav Reddy, J.—In each of these writ petitions filed under Article 226 of the Constitution for the issue of a writ, the petitioner is one P. N, Balasubramanian, Chairman and Managing Director, Barium Chemicals Limited, Kamavaram, Khammam District. He has filed these four writ petitions seeking to quash the orders of the Income Tax Officer, Khammam, passed u/s 144 of the Income Tax Act, 1961, making the best judgment assessments for the Income Tax assessment years 1967-68, 1968-69, 1969-70 and 1970-71.

2. The facts giving rise to these writ petitions are not of an all too common kind and unfold a bewildering range and variety of evasive methods adopted by an assessee in the process of assessment proceedings. The petitioner is an assessee on the file of the Income Tax Officer, District VIII(9), New Delhi. He submitted his Income Tax returns for the assessment years 1967-68, 1968-69 and 1969-70 to the Income Tax Officer, District VI(9), New Delhi, u/s 139(1) of the Income Tax Act (hereinafter referred to as "the Act"). The said Income Tax Officer did not take any steps to complete the assessments for the said years till February, 1971. The Commissioner of Income Tax, Delhi-I, New Delhi, in exercise of his powers u/s 127 of the Act then transferred the assessment jurisdiction over the

petitioner's cases from the Income Tax Officer, District VIII(9), New Delhi, to the Income Tax Officer, Special Circle IX, New Delhi. This transfer was effected without notice to the petitioner. The petitioner filed Writ Petition No. 95 of 1972 on January 28, 1972, in the High Court of Delhi challenging the validity of the transfer as being violative of the provisions of Section 127 of the Act. The Delhi High Court admitted the writ petition and granted interim stay of the assessment proceedings before the Income Tax Officer, Special Circle IX, New Delhi. The writ petition was ultimately allowed by the Delhi High Court on May 5, 1972, and the order of transfer was quashed. Pursuant to the aforesaid orders of the Delhi High Court, the Income Tax Office, District VIII(9), New Delhi, issued notices under sections 142(1) and 143(2) of the Act on May 30, 1972, informing the petitioner that his Income Tax assessments for the years 1967-68, 1968-69 and 1969-70 would be taken up for hearing on June 8, 1972. Thereupon, the petitioner filed another writ petition in the Delhi High Court bearing W.P. No. 542 of 1972 contending that the time-limit for making the assessments for the three years under consideration had expired on March 31, 1972, u/s 153(1) of the Act and, consequently, the Income Tax Officer had no power to make any assessment in the petitioner's case for the years 1967-68, 1968-69 and 1969-70. The Delhi High Court was pleased to admit the writ petition on June 8, 1972, and also passed an interim order restraining the Income Tax Officer, District VIII(9), New Delhi, from proceeding with the assessments for the three years under consideration.

3. Before filing the Writ Petition No. 95 of 1972 before the Delhi High Court, the petitioner made an application to the Central Board of Direct Taxes requesting that his cases may be transferred to the Income Tax Officer, Kothagudem, as it would be more convenient for the petitioner to conduct his Income Tax assessment proceedings from Kothagudem. On April 17, 1973, the Income Tax Commissioner, Delhi III, transferred the assessment files to the Commissioner of Income Tax, Andhra Pradesh, Hyderabad, for onward transmission to the Income Tax Officer concerned. The petitioner received a letter from the Income Tax Officer, Khammam, on April 26, 1973, informing the petitioner that he has received the petitioner's case on transfer from Delhi and proposed to continue the proceedings from the stage left by the predecessor-income tax Officer. By the said letter, the Income Tax Officer, Khammam, called upon the petitioner to furnish information on numerous points relating to the assessment years 1967-68, 1968-69, 1969-70 and 1970-71. Along with the letters, notices under sections 142(1) and 143(2) of the Act were sent fixing the cases for hearing on April 30, 1973, for the four assessments under consideration. The above said letter and notices were served on the petitioner on the same day. On April 28, 1973, the petitioner wrote a letter to the Income-tax Officer, Khammam, raising several legal objections to the jurisdiction of the Income Tax Officer, Khammam, to assess the petitioner. He further complained that the time given to the petitioner was totally inadequate and it was impossible for him to furnish the particulars called for. Before sending the said letter he spoke to the Income Tax

Officer on the telephone and the Income Tax Officer told him that he was only acting under the instructions of the superiors and was helpless. This allegation is, however, denied by the Income Tax Officer in the counter-affidavit. The letter was delivered to the Income Tax Officer, Khammam, on April 30, 1973, on which date the matters stood posted for hearing before the Income Tax Officer, Khammam. On April 30, 1973, the Income Tax Officer, Khammam, sent another letter to the petitioner stating that a fresh opportunity was given to the petitioner by adjourning the cases for hearing to May 4, 1973. The Income Tax Officer sent formal notices under Sections 142(1) and 143(2) of the Act and this letter was received by the petitioner's secretary at Ramavaram when the petitioner was away and the letter and the notices were placed before the petitioner only on May 5, 1973, when the petitioner returned to headquarters. As the letter itself was seen on May 5, 1973, and since the case had been posted before the Income Tax Officer on May 4, 1973, the petitioner did not send any reply to the notices dated April 30, 1973. The Income Tax Officer, Khammam, completed the assessments for the assessment years 1967-68, 1968-69, 1969-70 and 1970-71 u/s 144 of the Act on May 7, 1973. The petitioner received assessment orders for all the four years on May 10, 1973. The assessment for the year 1967-68 was made on a total income of Rs. 4,81,590 against loss of Rs. 70,670 declared by the petitioner in his return. The assessment for the year 1968-69 was made on a total income of Rs. 60,760 against loss of Rs. 1,437 declared by the petitioner in his return. The assessment for the year 1969-70 was made on a total income of Rs. 2,37,465 against loss of Rs. 3,300 declared by the petitioner in his return. Finally, the assessment for the year 1970-71 was made on a total income of Rs. 2,34,100 against loss of Rs. 3,52,166 declared by the petitioner in his return. Aggrieved against the assessment orders passed u/s 144 of the Act, the petitioner has now filed these writ petitions questioning the validity of the assessments.

4. In the counter-affidavit filed by the Income Tax Officer, Khammam, it is, inter alia, stated that the ex parte orders u/s 144 of the Act were passed as the petitioner-assessee did not co-operate in spite of affording him several opportunities to represent his case. It is stated that the record also disclosed that several opportunities had been given by the predecessor-income tax Officer at Delhi prior to the transfer of the cases from Delhi, but the petitioner always postponed. The case was posted to November 22, 1972 by the Income Tax Officer, Special Circle IX, New Delhi, and underwent several adjournments. At every hearing either the petitioner or his representative stated that the details of information called for was being compiled. It is stated in the counter-affidavit that the transfer of the case to the Income Tax Officer, Khammam, was at the request of the petitioner and the proceedings before the Income Tax Officers, Delhi and Khammam, clearly showed that the petitioner was adopting dilatory tactics and, therefore, the ex parte assessment had to be made. The statement attributed to the Income Tax Officer, Khammam; during the telephone conversation with the petitioner is denied. It is the case of the revenue that, in

view of the short time available for the completion of assessment proceedings within the time prescribed by the statute, and the inordinate delay caused by the petitioner's dilatory tactics, the assessments were completed expeditiously. It is further stated that the petitioner has an effective alternative remedy by way of appeal against the order of assessments and by way of an application to reopen the ex parte assessments u/s 146 of the Act.

5. The central argument, if not the exclusive argument, in the case that effectively engaged our attention was that the assessment orders passed u/s 144 of the Act largely lacerated, as they were, by the violent breach of the principles of natural justice, cannot survive. The learned counsel also submits that the petitioner has not filed any application u/s 146 of the Act to reopen the assessments and an appeal is not an effective remedy as the validity of the assessment itself cannot be gone into in an appeal u/s 251 of the Act. On the other hand, it is the contention of the revenue that the petitioner has an effective alternative remedy by way of an appeal, that the petitioner has already availed of that opportunity, that the appellate authority has got power to annul or set aside the assessment and that the petitioner is not, therefore, entitled to invoke the extraordinary discretionary jurisdiction of this court under Article 226 of the Constitution.

6. Before we proceed to consider the contention of the petitioner-assessee founded on the breach of natural justice, it would be convenient to examine the soundness of the objection on behalf of the revenue relating to maintainability of the writ petitions on the ground that they are barred by the doctrine of exhaustion of statutory remedies and the assertion of the assessee on the question of the adequacy or otherwise of the statutory remedy. There is no dispute that appeals have been filed by the petitioner u/s 246 against the impugned orders of ex parte assessments and they are now pending before the Appellate Assistant Commissioner. Strong reliance was placed by the learned counsel for the revenue in support of his contention on the decision of the Supreme Court in *Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta, and Another*, . In that case, the Supreme Court observed :

"The Income Tax Act provides a complete machinery for assessment of tax, and for relief in respect of improper or erroneous orders made by the revenue authorities. It is for the revenue authorities to ascertain the facts, applicable to a particular situation, and to grant appropriate relief in the matter of assessment of tax. Resort to the High Court in exercise of its extraordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment, levy and collection of Income Tax may be permitted only when questions of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess."

7. The Supreme Court in *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, again observed :

"We deem it necessary once more to emphasise that the Income Tax Act provides a complete and self-contained machinery for obtaining relief against improper action taken by the departmental authorities, and normally the party feeling himself aggrieved by such action cannot be permitted to refuse to have recourse to that machinery and to approach the High Court directly against the action.....Where the party feeling aggrieved by an order of an authority under the Income Tax Act has an adequate alternative remedy which he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case to be made out for entertaining a petition for a writ."

8. The Calcutta High Court in *Dhaniram Gupta Vs. Union of India (UOI) and Another* (No. 1), held that where the assessee was actively pursuing an alternative remedy, the assessee was not entitled to invoke the jurisdiction of Article 226 of the Constitution. The learned counsel also relied upon an unreported decision of this court in *W.P. Nos. 1636 and 1818 of 1970* dated November 18, 1971, wherein it was held :

"Although it is true that the failure to resort to the appropriate remedies may be a bar to seek redress under Article 226 of the Constitution, however, where the High Court did not reject the petition on that ground at the stage of admission, it will not be proper to rely upon that circumstance when the hearing of the petition clearly discloses that there has been a violation of the principles of natural justice. It is well accepted that the existence of an adequate alternative remedy is not always a bar to the issue of a writ."

9. The learned counsel for the petitioner, however, urges that the alternative remedy is not adequate, that the Appellate Assistant Commissioner cannot declare the assessment orders void or invalid u/s 251 of the Act and that it would be proper for this court to entertain the writ petition. He placed reliance on the decision of the Supreme Court in *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, , where Krishna Iyer J. observed :

".....had the aggrieved party been driven to the hierarchy of courts, he would have lost, not on the merits, but by the sands of time running out before ultimate victory was in sight."

10. He also relied on a decision of the Punjab High Court in *GOPAL SINGH Vs. COMMISSIONER OF Income Tax.*, and submitted that in an appeal against an assessment, the validity of the notice issued under Sections 142(1) and 143(2) in pursuance of which the assessment was made, cannot be raised without resorting to the proceedings u/s 146. In that case, dealing with corresponding provisions under the Indian Income Tax Act, 1922, it was observed that in an appeal against an assessment u/s 23(4), the validity of the notice u/s 34(1)(a) in pursuance of which the assessment was made cannot be raised without resorting to proceedings u/s 27. The same view is taken in *NABA KUMAR SINGH DUDHURIA Vs. COMMISSIONER OF Income Tax, BENGAL.*, ; *Mauladin Ayub Firm*

Vs. Commissioner of Income Tax, Bombay South, ; Chhotelal Gobardhan Das Vs. Commr. of Income Tax, U.P. and V.P. Lucknow, ; Gaurishanker Kedia Vs. Commissioner of Income Tax, Bombay City II, ; Padampat Singhania Vs. Commr. of Income Tax, U.P. and Ajmer-Merwara, Lucknow, and Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate, .

11. The well-known authors, Kanga and Palkhivala, in their book "The Law and Practice of Income Tax," sixth edition, volume I, at page 767 observe :

"The assessee can appeal u/s 246 against a best judgment assessment only if he objects to (a) the amount of income or loss assessed, or (b) the amount of tax determined, or (c) the status under which he is assessed,--but he cannot appeal on the ground that the best judgment assessment is invalid or should be cancelled since he was prevented by sufficient cause from complying with the notice, non-compliance with which has resulted in the best judgment assessment. If the assessee wants to have the assessment cancelled on the ground of sufficient cause for non-compliance with the notice, he must apply under this section. In other words, Section 246 gives the assessee a right of appeal limited to the quantum of the income or loss assessed or the tax or status determined. It does not give him the right to object to the validity of the best judgment assessment on any of the grounds mentioned in this section ; such objection can be raised only in an application under this section (Section 146) to have the assessment cancelled".

12. The learned counsel for the petitioner admits that the petitioner had not filed any application u/s 146 of the Act for the cancellation of the assessment on the ground that he had no reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the notice issued under Sections 142(1) and 143(2) of the Act.

13. The learned counsel for the revenue, Sri Rama Rao, on the other hand submits that the powers of the appellate authority u/s 251(l)(a) are wide. The Appellate Assistant Commissioner u/s 251(l)(a), he argues, may examine the assessment order and correct the assessment in respect of all matters and he may remand the case or direct the Income Tax Officer to make further enquiry and report the result of the same. It is submitted that the Appellate Assistant Commissioner may annul the assessment or set aside the assessment and direct the Income Tax Officer to make a fresh assessment. Section 251(1) of the Act reads thus :

"(1) In disposing of an appeal, the Appellate Assistant Commissioner shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner and after making such further inquiry as may be necessary, and the Income Tax

Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;.,....

Explanation :--In disposing of an appeal, the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant".

14. It is abundantly clear from the aforesaid provisions that the powers of an Appellate Assistant Commissioner in an appeal against an order of assessment are wider than those of an appellate court under the Code of Civil Procedure. He may confirm, reduce, enhance or annul the assessment ; or he may also set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the directions given by him. In the fresh assessment, he may direct the Income Tax Officer to make such further enquiry as may be necessary. He may also direct the Income Tax Officer to give any fresh opportunity to the assessee to furnish any further information in his possession before determining the amount of tax payable by the assessee. The Income Tax Officer, shall, (hereupon, proceed to make fresh assessment on such material and determine, where necessary, the amount of tax payable on the basis of such fresh assessment. The words "where necessary" are crucial and indicate that the Income Tax Officer may determine that the assessee is not liable to pay any tax at all. The "Explanation" to the section further makes it clear that the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed. If the Appellate Assistant Commissioner is satisfied from the assessment proceedings that the assessment is unconscionable and unjust or that the principles of fairness and justice are eroded and the proceedings are purely the creature of animosity, he may direct the Income Tax Officer to give a fresh notice u/s 143(2) of the Act before the fresh assessment is completed. Such a notice would not amount to reopening of the assessment but only a continuation of the original assessment proceedings. In this view, we are fortified by a ruling of the Jammu and Kashmir High Court.

15. In *Rattan Lal Tikun Vs. Commissioner of Income Tax*, a Division Bench of the Jammu and Kashmir High Court observed:

"The power of setting aside the order of assessment, where it is illegal, is inherent in any appellate court and the A.A.C. has passed a perfectly legal order in directing the Income Tax Officer to issue notice to the assessee before making an assessment because he was not satisfied regarding the correctness of the assessee's return."

16. Repelling the contention that the order of remand and a fresh notice to the assessee amount to reopening of the assessment, the learned judges observed :

"A notice issued on the assessee u/s 143(2) under the direction of the Appellate

Assistant Commissioner would not amount to a reopening of the assessment. It is a continuation of the original assessment proceedings."

17. Further, Sub-section (4) of Section 250 expressly empowers the Appellate Assistant Commissioner to make, before disposing of any appeal, such further enquiry as he thinks fit or direct further enquiry to be made by the Income Tax Officer and report the result of the same to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner's power to make enquiry is only circumscribed by the same principles which limit the power of the Income Tax Officer while making enquiry at the time of making an assessment u/s 143 or 144. After such enquiry or examination of such report, if the Appellate Assistant Commissioner is convinced that the best judgment assessment is arbitrary, capricious or vindictive, he may himself rectify the defect guided by judicial considerations and rules of justice and equity.

18. In *SUNDERMUL and CO. Vs. COMMISSIONER OF Income Tax A. P.*, a Division Bench of this court consisting of Jaganmohan Reddy C.J. (as he then was) and Venkatesam J., held that it was not improper for the Appellate Assistant Commissioner, even in cases of best judgment assessment u/s 23(4), to look into the books which the assessee failed to produce when asked to do so u/s 22(4), in order to ensure that the judgment of the assessing officer is not capricious or arbitrary and, if it is defective, to rectify it on a valid and proper basis. The learned judges further observed at page 281:

"It may here be stated that prior to the amendment of the Income Tax Act in 1939, a best judgment assessment u/s 23(4) could only be challenged or questioned by an application u/s 27, and thereafter by an appeal u/s 30. But the Amendment Act has made a provision, in Section 30, permitting an appeal by an assessee against an order of the Income Tax Officer making an assessment u/s 23(4), thereby enlarging the right of the assessee to question the assessment itself, i.e., question the quantum or even the validity of the assessment by reason of the notices issued u/s 22 being invalid."

19. We are in entire agreement with the opinion expressed by the learned judges of this court. We hold that it would not be improper for the Appellate Assistant Commissioner even in cases of best judgment assessment u/s 144 of the Act to look into the accounts which the assessee failed to produce when asked for u/s 142(1) and to satisfy himself that the judgment of the assessing officer was not arbitrary or capricious and rectify it properly if found defective. The contention that the alternative remedy is not adequate must, therefore, fail.

20. Then that leads to the question whether the existence of an adequate alternative remedy is always a bar to the maintainability of a writ petition. It is now well established that the doctrine of exhaustion of statutory remedies is subject to two well recognised principles, firstly, where the provision of law under which the proceedings have been taken is unconstitutional or ultra vires, and, secondly, where the order impugned has contravened the principles of natural

justice : Vide State of U. P. v. Mohammad Nooh, AIR 1958 SC 86.

21. There survives the question whether the petitioner has established the violation of principles of natural justice in this case as alleged. It is submitted by the learned counsel that the notices under Sections 142(1) and 143(2) of the Act were only served on the secretary of the petitioner on May 4, 1973, giving an opportunity to the petitioner to file the required information on May 4, 1973, itself, that such a notice is no notice at all and further service on a servant is not sufficient service. He submits that there was no time at all given to the petitioner. In the circumstances, he submits that the petitioner had no adequate opportunity at all to make his representations before the assessment orders u/s 144 of the Act were passed. In support of his submission he relied upon a decision of this court in Commissioner of Income Tax Vs. Hyderabad Deccan Liquor Syndicate, , wherein it was observed that a mere servant employed to carry out the orders cannot be considered to be an agent appointed for accepting service of summons. But, in this case, it is not the case of the petitioner that the secretary on whom the notice was served had no authority to receive the summons.

22. Another case on which reliance was placed is Myitkyina Trading Depot Vs. Dy. Tahsildar, Paramakudi, Ramnad Dist. and Others, . In that case, the assessee was known to be in Rangoon and the notice was served by affixture to the residence at Ilyangudi. It was, therefore, held that service by affixture could never be due service under Order V, Rule 19, of the Code of Civil Procedure. The next case relied on is Burhanuddin Hussain Vs. State of Andhra Pradesh and Others, . That was a case where the order was passed without any notice to the party and further when the party came to know and requested for a copy of the order, he was denied the same. Therefore, the learned judge rightly held that the principles of natural justice had been violated.

23. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court held:

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it".

24. One more decision that requires to be referred to is PONKUNNAM TRADERS Vs. ADDITIONAL Income Tax OFFICER, KOTTAYAM, AND ANOTHER., wherein Mathew J. (as he then was) observed at page 521:

"The breach of natural justice is itself the miscarriage of justice which enables the applicant to succeed, and never before has it been held that the court is entitled to refuse him relief."

25. It is true and there can be no dispute that if the petitioner succeeds in establishing breach of natural justice certainly he is entitled to the relief. But, has

the petitioner, in this case, established any such breach ? It is the case of the petitioner that he submitted the returns to the Income Tax Officer, Delhi, District VIII(9), u/s 139(1) of the Act on June 28, 1967, June 24, 1968, and July 4, 1969, for the assessment years 1967-68, 1968-69 and 1969-70, respectively. His cases were subsequently transferred to the Income Tax Officer, Special Circle (9), New Delhi. The cases were posted before him for hearing on November 22, 1971, and they were subsequently adjourned at the request of the petitioner to December 3, 1971, December 15, 1971, December 23, 1971, and January 10, 1972. At every hearing either the petitioner or his representative stated that the details of the information called for were being compiled. The petitioner himself submitted his returns u/s 139(1) of the Act. " Then after the first hearing on November 22, 1971, he had time up to January 10, 1972, nearly fifty days, to get the required information. Without furnishing the information, he filed an application on January 4, 1972, before the Central Board of Direct Taxes for the transfer of his case to the Income Tax Officer, Khammam, on the ground of his convenience and also permanent residence. The petitioner meanwhile filed a writ petition in the Delhi High Court on January 28, 1972, challenging the validity of the transfer of his case from the Income Tax Officer, District VIII(9), New Delhi, to the income tax Officer, Special Circle (9), New Delhi, and obtained stay of all further proceedings in the matter.

26. On April 17, 1973, the Commissioner of Income Tax, Delhi III, according to the request of the petitioner, transferred the case to the Commissioner of Income Tax, Andhra Pradesh, who forwarded the same to the Income Tax Officer, Khammam. By then, it is stated by the learned counsel for the revenue, there were 26 days available to complete the assessments within the statutory period of limitation. Otherwise, the assessments would get time-barred. Therefore, the Income Tax Officer, sent a notice on April 26, 1973, requiring him to furnish the necessary information on April 30, 1973. The petitioner again questioned, in the Delhi High Court in W.P. No. 960 of 1973, the validity of the transfer of the assessment proceedings to the Commissioner of Income Tax, Hyderabad. The Delhi High Court dismissed the writ petition on March 6, 1974, holding that the transfer was at his own request and was in accordance with Section 127 of the Act. The proceedings had been pending before the Income Tax Officer, Special Circle (9), Delhi, and. the petitioner had already taken a number of adjournments before him. He knew about the information that was required and he had more than an year to compile the information because the last adjournment before the Income Tax Officer, Special Circle (9), New Delhi, was on January 10, 1972. In spite of it he prayed for further time for furnishing information and the Income Tax Officer, Khammam, gave him time till May 4, 1973, and the notice was served on May 4, 1973. That apart, under Sub-section (2) of Section 127 the transfer of a case from one Income Tax Officer to another shall not render it necessary to re-issue any notice already issued by the Income Tax Officer from whom the case was transferred. Issue of any fresh notice by the Income Tax Officer, Khammam, was not necessary under the law, since notices

had already been issued by the Income Tax Officer, Delhi, from whom the case was transferred. The assessment orders were passed on May 7, 1973. The petitioner also did not appear before the Income Tax Officer subsequently and file any application u/s 146 of the Act to reopen the assessments. These circumstances clearly establish that the petitioner was given reasonable opportunity to furnish full information before the orders of assessment were passed u/s 144 of the Act but the petitioner did not avail himself of that opportunity.

27. The Supreme Court in *Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others*, , emphasised that the court alone was the final authority to determine whether the opportunity afforded in a given case was or was not reasonable. This court in *Dharni Trading Company v. State of A.P.* [1974] 2 APLJ 166 ruled:

"Whether an opportunity has been afforded and whether that opportunity was or was not reasonable in a given case should be ascertained by the court on an encyclopaedic view of all the material in the case".

28. On an encyclopaedic view of the entire circumstances in the case, the grievance of the petitioner cannot be rightly mapped or plotted within the terrain of the principles of natural justice. We, therefore, hold that there has been no breach of natural justice.

29. In the result, the writ petitions must fail and they are accordingly dismissed with costs. Advocate's fee Rs. 100 in each.