

(1964) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 393 of 1962

Radhakrishna and Co.

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 17-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 17 STC 128

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : A.V.S. Ramakrishnaiah, for the Appellant; S.R. Reddy, for Third Government Pleader, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is an application for the issue of a writ of mandamus and arises in the following circumstances:

2. For the assessment year 1957-58, the petitioner was assessed on 19th March, 1958. It was subsequently however revealed that the petitioner was guilty of some suppression of some transactions. A penalty order therefore was made on 8th May, 1958. Against that order, the petitioner went in appeal to the Assistant Commissioner. That appeal was dismissed. He carried the matter to the Tribunal again in appeal, but was not successful. Ultimately he challenged the legality of the order dated 8th May, 1958, in W.P. No. 127 of 1959. A Bench of this Court dismissed that writ petition holding that the order is not bad in law. It was held that the petitioner suppressed several taxable items with the dishonest intention of evading sales tax. This judgment was given on 22nd August, 1959. After a lapse of nearly three years, another petition now is filed challenging the validity of the order dated 8th May, 1958. The learned Government Pleader raised a preliminary objection that the previous order of this Court dated 22nd August, 1959, operates as res judicata as that order has become final between the parties. The counsel for the petitioner however argues that the point which he is now raising was not directly raised in the previous writ petition.

3. That does not in my opinion make any change. When it is now decided in *Daryao and Others Vs. The State of U.P. and Others*, that principles of res judicata are applicable to applications under Article 226, it must follow that the rule of constructive res judicata would also be attracted. If the petitioner had failed to raise all the contentions which might and ought to have been raised, it would be deemed that they were raised and disposed of for the purposes of the application of the principles of res judicata. Assuming therefore that the point which the petitioner was now raising was not raised, even then the previous decision of this Court operates as res judicata.

4. Even otherwise I do not find any substance in the contention now raised. The contention is that the assessment order dated 19th March, 1958, was not for the whole year, but only for a part of the year, that the assessment is therefore bad in law and consequently the order of penalty of 8th May, 1958, has become bad in law. I see no force in this contention. The order dated 19th March, 1958, was never challenged at any stage. It became therefore final and it is not open for this Court for the first time now to find out whether the order dated 19th March, 1958, is bad in law. Even in this writ petition no writ of certiorari is asked to quash that order. No specific grounds are shown in the affidavit as to why that order is a nullity. That order therefore has become final. What was challenged in the previous writ petition and is now challenged in this writ petition is not the order of 19th March, 1958, but the order of penalty given on 8th May, 1958. The legality of that order has been upheld by this Court in the previous decision. I do not therefore think that there is any force in the contention that the previous judgment does not operate as res judicata. I would, therefore, uphold the preliminary objection raised by the Government Pleader and also as I see no force in the contention raised by the petitioner, I would dismiss the writ petition with costs. Government Pleader's fee Rs. 150.