(1987) 12 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 6604 of 1987

Ravi Construction Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-12-1987

Acts Referred:

Citation : (1988) 38 TAXMAN 27

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; R.P. Bhatt, for the Respondent

Judgement

A.M. Ahmadi, J.—The petitioner, a partnership firm, challenges the rejection of the petitioner''s returns filed under Amnesty Scheme and certain other incidental orders passed in that behalf. We propose to confine ourselves to the relief claimed in paragraph 28(B) of the petition, namely, that the orders passed by the Tribunal, Ahmedabad Bench dated 14-4-1987 and 16-10-1987 be quashed and the petitioner''s appeal be restored to file and in the meantime the prosecution launched against the petitioner be stayed. The learned counsel for the parties have also addressed us on this limited question and, therefore, we are not required to set out the averments made in the petition in support of the other reliefs sought in paragraph 28 of the petition. The facts relevant for the disposal of the limited question are as under. The petitioner made an application under Amnesty Scheme to the Commissioner and paid the tax as per the said scheme. The petitioner thereafter addressed a letter dated 21-3-1987 to the Assistant Registrar, Tribunal, Ahmedabad stating that the petitioner intended to file the return for the assessment year 1981-82 under the Amnesty Scheme and, therefore, seeks leave to withdraw the appeal which was fixed for hearing on 22-4-1987. This letter was received by the Assistant Registrar on 31-3-1987. However, before the appeal could be disposed of as withdrawn on the basis of the said letter the petitioner wrote another letter dated 9-4-1987 stating that the petitioner-firm had already filed the returns as per the Amnesty Scheme and the returns were accepted subject to withdrawal of the appeal. A request was made by that letter that the appeal which was fixed on 22-4-1987 may be adjourned to enable the petitioner to approach the revenue authorities to get their returns processed and appropriate orders made in that behalf. It appears that notwithstanding the said letter written by the petitioner to the Tribunal, the Tribunal passed the impugned order on 14-4-1987. On a perusal of the said order it becomes clear that the Tribunal took note of the petitioner''s letter of 27-3-1987 and advanced hearing of the appeal from 22-4-1987 to 12-5-1987, that is, by about twenty days. It appears that the petitioner was not aware that the date for the hearing of the appeal was advanced to 2-4-1987. The departmental representative who was before the Tribunal stated that he had no objection if the assessee was permitted to withdraw the appeal. The Tribunal stated that it accordingly announced the decision in the open Court giving permission to the assessees to withdraw the appeal after considering its application. This observation gives the impression that the appeal was orally permitted to be withdrawn on 14-4-1987. Be that as it may, the fact remains that the petitioner was not informed that the date of hearing of the appeal was advanced to 2-4-1987 nor was the petitioner informed that the formal order permitting withdrawal of the appeal would be passed on 14-4-1987. On the petitioner coming to know about the disposal of the appeal, the petitioner made an application some time in May 1987 to the Tribunal to recall its order of dismissal of the appeal as withdrawn and to post the appeal for final disposal in accordance with law. In the said application the petitioner pointed out that initially the appeal was intended to be withdrawn on 22-4-1987 on which date it was fixed for hearing but, subsequently, the assessee changed its mind and indicated by the letter dated 9-4-1987 that the withdrawal of the appeal be postponed. It is, therefore, clear that there was a change of mind in the question whether the appeal should be withdrawn. The Tribunal, however, rejected the application of the petitioner and hence this petition.

2. It is clear from the above facts that even though the assessee informed the Tribunal by letter dated 27-3-1987 that it proposed to withdraw the appeal which was fixed for hearing on 22-4-1987 it had changed its mind as is evident from the subsequent letter dated 9-4-1987. The Tribunal, however, had without intimation to the assessee advanced the date of hearing of the appeal to 2-4-1987 that is by about twenty days. However, the formal order dismissing the appeal was passed on 14-4-1987 that is, after receipt of the letter of 2-4-1987. The Tribunal, therefore, ought to have applied its mind to the letter of 9-4-1987 before passing the impugned order on 14-4-1987. That apart, even after the receipt of the subsequent letter of May 1987 from the assessee, the Tribunal surprisingly refused to recall its order of 14-4-1987 and to hear the appeal on merits on the ground that though the Tribunal had power to do so it would exercise it in rarest of rare cases. It is a matter of volition of a party whether or not it desires to proceed with the appeal or withdraw the same. It would not be open to the Tribunal to advance the date of hearing without intimation to the

assessee admittedly the assessee had communicated to the Tribunal its decision to proceed with the appeal on merits before the date of hearing, that is 22-4-1987. It is, therefore, clear that the Tribunal committed an error firstly in advancing the date without intimation to the assessee, thereafter proceeding to pass formal order on 14-4-1987 notwithstanding the receipt of the communication of 9-4-1987 and still further refusing to recall that order on the assessee''s application of May 1987. We are, therefore, of the opinion that the order of the Tribunal passed in the aforesaid circumstances cannot be allowed to stand.

3. In the result, therefore, we set aside the impugned orders of the Tribunal dated 14-4-1987 (Annexure ''C'') and 16-10-1987 (Annexure ''D'') to the petition and direct that the Tribunal will restore the appeal to its file and dispose it of in accordance with law after hearing the parties to the appeal. The Tribunal will expedite the hearing of the appeal and dispose it of within two months from the receipt of the writ of this Court. In the meantime so far as the prosecutions launched by the department being criminal case Nos. 213 and 214 of 1987 pending before the Additional Chief Metropolitan Magistrate, Ahmedabad are concerned, the learned Magistrate will not pronounce the final order till the disposal of the appeal by the Tribunal. The Tribunal will communicate the decision taken by it in the appeal to the Additional Chief Metropolitan Magistrate, Ahmedabad to enable him to proceed further in the matter. Rule is made absolute accordingly with no order as to costs. Before we part, we make it clear that since we have confined ourselves to the relief in paragraph 28(B) and (E) of the petition, it will be open to the petitioner to pursue such remedy as is available to it insofar as the Amnesty Scheme is concerned.

