
(1987) 05 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 359 of 1987

Raza Textiles Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-05-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 251

Citation : (1987) 66 CTR 18 : (1989) 178 ITR 496 : (1987) 34 TAXMAN 130

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This writ petition is directed against the order dated January 29, 1986, passed by respondent No. 1, the Commissioner (Appeals), Kanpur. By the impugned order, respondent No. 1 has set aside the assessment for further investigation on a limited issue in respect of the petitioner's claim for deduction of an amount as business expenditure representing incentive bonus which had been disallowed by the Inspecting Assistant Commissioner (Assessment), the Assessing Officer.

2. Briefly, the facts are that in the assessment year 1980-81, the petitioner made a claim for deduction of Rs. 12,68,683, out of its gross income being the amount paid as incentive bonus to its employees. It appears that a similar claim was also made, though for a different amount, in the assessment year 1981-82. That claim was disallowed on several grounds by the Assessing Officer including that the claim did not satisfy the requisite conditions of Section 36(1)(ii) of the Income Tax Act, 1961 ("the Act"). One such ground for disallowance of the petitioner's claim was that the payments representing incentive bonus were not genuine and it was a bogus claim. The findings recorded in this regard were that relevant entries, instead of being made in the wage registers, were recorded on a separate sheet. The payments were received against thumb impressions. In a

large number of cases, the thumb impressions were identical or similar. In the first appeal, these findings were sustained. During the hearing of that appeal, the Assessing Officer was required to submit a remand report. It appears that during remand proceedings, an expert's opinion on the genuineness of the thumb impressions was called for. The doubts of the Assessing Officer that in most of the cases the thumb impressions were identical or similar was supported by the said report. The Commissioner (Appeals), after having discussed the remand report and other grounds of disallowance, confirmed the action of the Assessing Officer. As regards the genuineness of the claim, he held as under :

"On the other hand, when the assessee produced some sample vouchers showing payments of four different departments, it was found that adjustment of the loan to the workers was made against incentive bonus and the payments were shown as received by the workers but the thumb impressions in respect of such receipts were found to belong to persons other than the workers. When this default was pointed out, the explanation offered was that the workers had authorised some other persons to receive payments. Surprisingly, this fact was not noted in the wage sheets. Even the statements of such authorised persons have been found to be unreliable. Therefore, the clear impression is that for reasons best known to the appellant company, the nature of the payment (and to the extent incurred) is being withheld and even the genuineness of the payment is doubtful."

3. By the time the assessment for the year in dispute was finalised, the above proceedings for the year 1981-82 had already taken place but the matter was pending adjudication in second appeal before the Tribunal. The Assessing Officer basically relied on the findings recorded in the assessment year 1981-82 when he disallowed the claim for the year in question. Being aggrieved, the petitioner appealed to the Commissioner (Appeals), respondent No. 1. During the pendency of the appeal before respondent No. 1, the Tribunal decided the appeal for the assessment year 1981-82. It reversed the findings on each ground on which the disallowance was sustained. The expert's opinion was discarded by the Tribunal on the ground that the expert had not recorded any categorical finding about the forgery in the thumb impressions. For this view, the Tribunal relied upon the following observations in the expert's report:

"In spite of the above, as many thumb impressions seem to be similar to one another, without photo enlargement, scientific and satisfactory opinion cannot be given."

4. When the appeal for the year in dispute was heard, the petitioner relied upon the order of the Tribunal for the year 1981-82 which was in its favour. The Commissioner (Appeals) considered the matter afresh. He questioned the petitioner's representation about the genuineness of the thumb impressions. The stand taken on behalf of the petitioner was that the year 1981-82 was a strike period, and, therefore, one person took authorisation from 5 to 6 persons to receive incentive bonus on their behalf while 1980-81 was a normal year and there was no strike. It was claimed that to this extent the facts of assessment

year 1981-82 are not exactly similar to the facts of assessment year 1980-81. The stand of the petitioner before the Assessing Officer, however, was that the facts in the two years were exactly similar and there was no difference in the two years. On a perusal of the expert's opinion, the Commissioner (Appeals) found that on one date, 15 to 20 thumb impressions were said to be alike. The petitioner's representative expressed his inability to file detailed information without taking photo enlargements of the thumb impressions. In this view of the matter and for other reasons stated in his order he set aside the assessment for the investigation. He directed that while looking into the genuineness of payment, if the Inspecting Assistant Commissioner decides to get the thumb impressions examined, he should not stop in the middle but should get them examined by photo enlargement also. The assessee should be given opportunity to explain before any material is used against him. The Commissioner also gave some more directions regarding the line on which the case should be investigated and then determine the admissibility of the assessee's claim, viz., incentive bonus.

5. It is against the aforesaid order that the present writ petition has been filed seeking a writ of certiorari and a writ of mandamus directing the Commissioner (Appeals) to follow the order of the Tribunal and to grant the petitioner the appropriate relief.

6. We have heard learned counsel appearing for the petitioner. It is claimed that in the hierarchy of the Income Tax Department, the Commissioner (Appeals) is an authority subordinate to the Tribunal. In setting aside the assessment for fresh consideration, the Commissioner (Appeals) has acted without jurisdiction and in disregard of judicial propriety and discipline. It is urged that the question which came up for consideration before the Commissioner (Appeals) was no longer an open issue inasmuch as a similar question on identical facts had already been settled by a higher authority and that had become final with the dismissal of the application u/s 256(2) of the Act filed by the Revenue.

7. Section 251 of the Act deals with the powers of the Commissioner (Appeals) and specifies the nature of orders that can be passed in appeal. Sub-section (1) (a) of Section 251, so far as it is relevant for this case, states:

"251, Powers of the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals).

(a) in an appeal against an order of assessment ... 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 or, as the case may be, the Commissioner (Appeals) and after making such further enquiry as may be necessary, and the Income Tax Officer shall thereupon proceed to make such fresh assessment..."

8. It is settled that an assessment year is a self-contained assessment period and a decision in one assessment year does not ordinarily operate as *res judicata*

or estoppel in respect of the matters decided in another year. It is open to the Income Tax Officer to depart from the decision in another year since the assessment is final and conclusive between the parties only in relation to the assessment for a particular year for which it is made.

9. It is also settled that an appellate court may depart from a decision given earlier if some new facts are brought on record or if the earlier decision was rendered on incomplete or half-baked facts. We cannot say that the course adopted by the Commissioner (Appeals) in setting aside the assessment was unreasonable when he did not allow the mistake committed by the Revenue earlier to perpetuate in not obtaining a proper expert's opinion.

10. Time and again, it has been stressed that the High Court should not ordinarily interfere with the order of the tax authorities under Article 226 of the Constitution and should relegate the parties before the hierarchy of authorities provided under the Act to vindicate their grievances. This is, of course, subject to certain exceptions, such as that the order complained of suffers from inherent lack of jurisdiction or that it has been made in violation of the principles of natural justice or is patently absurd on its face.

11. In *Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta, and Another*, , the Supreme Court held (at page 829) :

"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...."

12. In *Gita Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal and Others*, , it was held (at page 498) :

"... the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists, it will be a sound exercise of discretion for the High Court to refuse to entertain a petition under Article 226 unless there are good grounds therefore."

13. In a recent decision in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , the Supreme Court, while expressing its displeasure, has deprecated in very strong words the tendency of permitting the taxpayer to approach the High Court under Article 226 thereby permitting the circumvention of statutory procedures, when the statute itself provides adequate and efficacious remedy by way of appeal or reference. The Supreme Court observed as under (at page 176) :

"In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, , A.P. Sen, E.S. Venkataramiah and R.B. Misra JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the prescribed authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring, as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition, is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as, for instance, where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters...."

14. In *Dinesh Prasad and Others Vs. State of Bihar and Others*, , a Full Bench of the Patna High Court, after an exhaustive discussion and reviewing several authorities of the Supreme Court, held (at page 121) :

"Therefore, the salutary rule is that the writ court would entertain the matter only if adequate and efficacious remedies have been first resorted to and exhausted. The failure to observe that rule can only be at the peril of crushing the extraordinary jurisdiction itself and ultimately rendering it inefficacious, because it is, and was, never intended, to replace or substitute the ordinary legal remedies expressly provided by the Legislature. Therefore, on principle itself, resort to the extraordinary jurisdiction is permissible only after resorting -to the alternative remedy where available. . . . Unless the extraordinary remedy of the writ jurisdiction is to be hamstrung and indeed rendered nugatory by making it a substitute for the ordinary statutory remedy, the distinction betwixt the two has to be firmly maintained. The writ jurisdiction is not the remedy of the first instance where others exist. It is the remedy of the last resort. If the Legislature, in its wisdom, provides a statutory remedy, it is not for the High Courts to override and nullify that mandate."

15. and it then concluded (at page 123) :

"In consonance with the above, the answer to question II must be rendered in the affirmative, and it is held that the suitor must exhaust the remedies under the Act before seeking relief in the writ jurisdiction, unless the monstrosity of the situation or other exceptional circumstances cry out for interference by the writ court at the very threshold"

16. From the above, it follows that the alternative remedies provided under the statute have to be exhausted before seeking relief in the writ jurisdiction under

Article 226. In our opinion, the present case is not one which falls under the exceptional categories. The impugned order was within the competence of the Commissioner (Appeals) which he could pass u/s 251. Even accepting the petitioner's case at its face value, all that can be said in its favour is that the impugned order is erroneous or illegal. It is not disputed that the order is appealable and an appeal would lie before the Tribunal. The relief which is being sought by this writ petition can as well be granted by the Tribunal if the petitioner is able to make out a case that the remand in the instant case was not justified. No valid explanation could be given by the petitioner before us to allow it to abandon this course to file a second appeal and thereafter a reference to this court.

17. Learned counsel for the petitioner, however, relied upon a Division Bench decision of this court in Commissioner of Income Tax Vs. Hari Nath and Co., . In our opinion, this case is clearly distinguishable and has no bearing on the facts of the present case.

18. Learned counsel also relied upon the decision of the Calcutta High Court in Russell Properties Pvt. Ltd. Vs. A. Chowdhury, Addl. Commissioner of Income Tax and Others, . In that case, the court was concerned with the problem whether proceedings initiated u/s 263 of the Act were invalid. For some earlier year, the Tribunal, following a decision of the Supreme Court, has held that the disputed income from the property in that case was assessable under the head "Profits and gains of business or profession". The Income Tax Officer followed the decision of the Tribunal in framing the assessment for three subsequent years. The Commissioner, being of the opinion that these assessments were erroneous took proceedings u/s 263 which were challenged by means of a writ petition before the High Court. The High Court quashed those proceedings. It took the view that the assessment order could not be held to be erroneous when it followed the decision of the Tribunal being a decision of a superior authority. The said decision, in our opinion, has no application to the facts of the present case which is clearly distinguishable. There was no dispute on the facts in the case before the Calcutta High Court and the question was decided by the Tribunal on admitted facts as an abstract question of law. The correct facts in the instant case are yet to be determined and the matter was remanded for this purpose only by the Commissioner (Appeals).

19. For what has been stated above, we hold that it is not a fit case where we should interfere under Article 226. The writ petition is accordingly rejected summarily.