
(1993) 03 MAD CK 0026

In the Madras High Court

Case No : W. P. No's. 7705 and 7706 of 1984

S. Govindaraja Mudaliar

APPELLANT

Vs

Income Tax Appellate Tribunal and another

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 254, 288
Wealth Tax Act, 1957 — Section 24(5), 44, 5, 5(1)

Citation : (1994) 118 CTR 344 : (1994) 206 ITR 62 : (1994) 73 TAXMAN 659

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : K. Mani, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

Raju J.

1. The above writ petitions may be disposed of together since they relate to the same subject-matter but concerning different stages and

submissions also have been made by learned counsel appearing on either side in common.

2. Writ Petition No. 7705 of 1984 has been filed for a writ of certiorari to call for and quash the proceedings of the first respondent-Tribunal in

W.T.A. Nos. 583 to 596/(Mas) of 1982, dated October 28, 1983, whereunder the first respondent, Income Tax Appellate Tribunal, Madras, has

finally disposed of and dismissed the appeal of the petitioner on merits. Thereupon, the petitioner filed miscellaneous applications in Miscellaneous

Petitions Nos. 80 and 84 to 97 of 1983, seeking rehearing of the matter, since, according to the petitioner, the earlier disposal dated October 28,

1983, without hearing learned counsel for the assessee, could not be said to be a

disposal on the merits after hearing the parties. The first respondent-Tribunal rejected the miscellaneous applications holding that no case has been made out for restoration and for the reason that there was no error or mistake apparent on the record, by its order dated May 21, 1984. It is to cancel the said order dated May 21, 1984, and to rehear the main appeals that W.T.A. Nos. 583 to 596/(Mas) of 1982 and W.P. No. 7706 of 1984 have been filed.

3. Having regard to the limited controversy in these proceedings, it would be unnecessary for this court to advert to the various claims and counter-claims made on the merits of the appeals filed before the Tribunal or with the cases themselves. Suffice it to notice certain salient features that are absolutely necessary for adjudicating on the grievance and claim made at the time of the hearing. The petitioner filed various appeals under the Wealth-tax Act, 1957, and Rules made thereunder as against the orders of assessment made in respect of different years as found noticed in the impugned orders. The appeals in question appeared to have come up for hearing before the Tribunal on October 11, 1983. Counsel engaged by the petitioner was said to be not present at the time of hearing. The petitioner who was said to have come to the Tribunal with his auditor claims to have requested that the appeals may be taken up later or the next day, but the Tribunal appeared to have insisted upon the starting of the case meaning thereby the commencement of the hearing. Even in the petition given on October 11, 1983, made available in the typed set of papers filed before this court it is stated that by the time counsel could finish his case before another Bench, the hearing of the appeals of the petitioner was completed. The petitioner conceded that since various legal issues were involved, they could not put forward those points in the absence of his counsel and consequently he prayed the Tribunal to give him "an opportunity to make further submissions and the appeal may kindly be take up for further hearing tomorrow or any other day convenient to the Tribunal".

4. Again, the petitioner has given another letter dated October 14, 1983, to the Assistant Register of the Tribunal that when he submitted his petition on October 11, 1983, the Judicial Member gave him the impression that he would be given a hearing the next day and since that matter was not taken up the next day also, the petitioner may be informed of the next

hearing at an early date. Again, the petitioner has given another petition on November 25, 1983, stating that, on the date of the hearing, viz., on October 11, 1983, the petitioner and his auditor requested for the case being passed over and adjourned to the next date, and, at the request of the Tribunal, the auditor submitted certain facts and details for consideration even though he was not authorised to appear in the matter. It may be noticed even at this stage that the want of authority in the auditor has been introduced for the first time in this petition dated November 25, 1983. While further referring to the earlier requests made for rehearing, a suggestion is made that his request was accepted and it is only on such directions that an application came to be filed to the Bench clerk and once again he requested for posting the appeals for hearing at an early date and intimation of the date of such hearing.

5. Again, with the support of an affidavit executed on December 7, 1983, M.P. Nos. 80 and 84 to 97 of 1983 in W.T.A. Nos. 583 to 596 of 1982 appeared to have been filed. In the affidavit, it is stated that a request was made to pass over the appeals to await counsel, that the Judicial Member wanted the auditor to state the facts, that the auditor was not authorised to appear in the appeals and "this fact was brought to the notice of the Bench", that the appeals involve substantial issues of law and that the auditor was required to state certain facts and thereafter the Bench rose abruptly, giving an impression that the appeals had been adjourned. It is also stated in the affidavit that the petitioner approached the Judicial Member requesting for an early hearing of the appeals and that he was given an impression that the appeals would be posted for hearing, but on December 1, 1983, the petitioner received the order of the Tribunal dated October 28, 1983, dismissing all the appeals. While admitting the position that the order refers to the representation made by the auditor of the petitioner, it is claimed that though the auditor came to the Tribunal, he had no authorisation to appear and he had come only to instruct counsel and this fact was also brought to the notice of the Bench, meaning thereby the Tribunal, and that notwithstanding this, the Bench has noted the presence of the auditor and dismissed the appeals. It is further claimed that, u/s 254 of the Income Tax Act, 1961, the parties have to be heard before the appeal is disposed of and, in the instant case, no such hearing

was given and hence the disposal of the appeals without hearing, and at any rate without proper hearing, is erroneous and the order is liable to be

cancelled. It is only thereafter that the Tribunal considered the claims made by its order May 21, 1984, and expressed the view referred to supra

while rejecting the applications, Aggrieved by the above, the writ petitions have been filed.

6. It is represented by counsel appearing on either side that the petitioner has filed tax case petitions before this court for referring the questions of

law involved in those cases for adjudication by this court under the provisions of the Act and that the said petitions are pending. It is also brought

to my notice that the hearing of those petitions have been deferred awaiting the disposal of these writ petitions.

7. Mr. Mani, learned counsel appearing for the petitioner, vehemently contended that the presence of, or the representation made by the auditor,

who was said to be not authorised to appear could not be said to constitute a hearing of the parties obliged to be given under provisions of the

Act, that therefore the appeals must be considered to have been disposed of without hearing or without giving a proper hearing and that, therefore,

the Appellate Tribunal ought to have entertained and allowed the applications filed for rehearing and the failure to do so is contrary to law and

constitutes a failure to exercise the jurisdiction vested in the Tribunal. Learned counsel also contended that the various claims made in the affidavit

filed before the Tribunal have not been contradicted and that the dismissal of the appeals could not be said to be valid and proper disposal in

accordance with law. My attention has been invited to section 254 of the Income Tax Act, 1961, and section 24(5) of the Wealth-tax Act, 1957.

Both the above provisions would indicate that the Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such

orders thereon as it thinks fit. My attention was also drawn to the rules 24 and 25 of the Income Tax (Appellate Tribunal) Rules, 1963, section 44

of the Wealth-tax Act and section 288 of the Income Tax Act, wherein appearance by authorised representatives has also been referred to.

8. Mr. N. V. Balasubramanian, learned standing counsel for the Department, with equal force, while traversing the claims made by learned counsel

for the petitioner, contended that the auditor's representation at the time of hearing of appeals was quite in accordance with law and that the

petitioner who was present not having objected to the appearance and argument of the case by the auditor is estopped from later turning round to contend that the auditor had no authorisation when the order went against the petitioner. It is also contended by standing counsel that the affidavit filed by the petitioner in support of his representations was not in conformity with the manner and form prescribed, as rightly noticed by the Tribunal, and that at any rate the appeals having been disposed of on the merits, the only remedy open to the petitioner was to pursue further proceedings under the Act before this court by means of seeking a reference and the petitioner having availed of that remedy also, there is no justification in the claim of the petitioner in the present writ petitions. Learned counsel also contended that the Tribunal has given cogent and convincing reasons in its order dated May 21, 1984, while rejecting the miscellaneous petitions and the order does not suffer from any error of procedure or of law warranting interference by this court under article 226 of the Constitution of India.

9. I have carefully considered the submissions of learned counsel appearing on either side. In my view, the course adopted by the Tribunal, both in deciding the appeals initially on the merits and in rejecting the miscellaneous petitions subsequently, is quite in accordance with law and the orders do not suffer from any infirmity. It is not in dispute that generally an auditor is a recognised authorised representative as per rules and hearing of such a person constitutes hearing of the party itself. The objection taken for the petitioner is that in the case on hand, the auditor was not authorised to appear and the petitioner has only engaged a counsel and the auditor who came to instruct him and who is not authorised specifically to appear and argue the case, could not be said to have authorisedly represented the petitioner before the Tribunal. A plea of this nature deserves reference only to be rejected. The auditor is one of the categories of authorised representatives recognised in law to represent a party before the Tribunal. In my view, the representation made by such a person who admittedly came for instructing another class of authorised representative (counsel) who was already engaged, with the tacit approval and implied consent and, in the admitted presence of the petitioner himself before the Tribunal, could not be said to be an unauthorised representation. The stand taken by the petitioner not only smacks of unscrupulousness but

appears to have been systematically developed in stage with embellishments of his own at each stage involving vital contradictions too.

10. The petition dated October 11, 1983, virtually admits of the arguments having been advanced by the auditor in the presence of the petitioner

and it is reinforced by the further fact that the request made in the said petition was only ""to make further submissions"". That apart, it is not stated in

this petition, which was filed on the same date, viz., October 11, 1983, that the auditor was not authorised by the petitioner to make

representations. The alleged impression gained by the petitioner, as noted in the letter dated October 14, 1983, is an improvement sought to be

introduced which has been further improved in the petition dated November 25, 1983, wherein for the first time the want of authority was

mentioned. The affidavit dated December 7, 1983, introduces a new version for the first time that as the auditor was making representations the

Bench rose abruptly giving an impression that the appeals had been adjourned. The further claim that, even at the time of hearing, the want of

authority in the auditor has been brought to the notice of the Tribunal and in spite of the same, the presence of the auditor was noticed and the

appeals were dismissed is the climax of the ingenuity of the petitioner invented for the occasion.

11. At the time of hearing, learned counsel for the petitioner invited my attention to paragraph 7 of the order dated October 28, 1983, which reads

:

Even at the time of hearing, it has been admitted by learned counsel for the assessee that no exemption u/s 5(1)(iv) was allowed. . .

to contend that the Tribunal was under the mistaken impression about the person who appeared. The assumption in this regard by learned counsel

for the petitioner, in my view, is unwarranted, since a specific reference is made in the beginning of the order itself where the name of the person

who appeared is noticed in unmistakable terms.

12. The facts referred to above would by themselves go to show beyond doubt that the petitioner took a risk in allowing or permitted the auditor

to argue the appeals in the absence of counsel, may be when it was so insisted upon by the Tribunal and that, in my view, constitutes no error of

law in the procedure adopted. Even though the petitioner has formally engaged a

counsel who himself will come under the category of authorised representative, representative at the time of hearing by the auditor who is another category of authorised representative, with the tacit approval and in the presence of the assessee/appellant, in my view, would constitute proper representation of the party. The fact that the auditor is also one of the classes of authorised representatives recognised in law and he argued the case before the Tribunal, therefore, constituted valid representation of the party particularly when, with approval and in the presence of the petitioner himself, the representation was made on the merits of the case. The attempt of the petitioner to develop his case at every stage to suit his convenience in order to bring the case as one of "ex parte" hearing does not merit any consideration. In my view, the case as developed to justify his request for rehearing involves self-contradictions too. That apart, as noticed already, the appeals have been heard and an order has been passed on merits. The dismissal of the appeals is not for default summarily and consequently the plea for rehearing particularly when the presence of the auditor, who was heard, has been noted, does not arise.

13. For all the reasons stated above, I do not see any merit in the claim of the petitioner that he has been denied an opportunity of hearing and making proper representations in the appeals. Consequently, I see no merit in the writ petitions shall not be construed as expression of any opinion on the merits of the claims of the assessee in the appeals themselves and particularly having regard to the fact that the same is being agitated before this court in proper proceedings filed under the Wealth-tax Act, 1957, itself.