(1990) 10 MAD CK 0049

In the Madras High Court

Case No : W.A. No. 1017 of 1990

S. Ramkrishnan APPELLANT

Vs

Income Tax Appellate Tribunal RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:
Income Tax Act, 1961 — Section 254, 254(2), 64

Citation : (1991) 1 LW 686

Hon'ble Judges : Dr. A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : V.S. Jayakumar, for the Appellant;

Judgement

Dr. A.S. Anand, C.J.—This writ appeal is directed against the judgment of a learned judge of this court in Writ Petition No. 13800 of 1990.

2. The appellant is an Income Tax assessee. During the year ending March 31, 1981, he filed a return of income on November 5, 1982. The

appellant was a partner through its karta in a firm called M/s Muthukumarswamy Chetty and Co. The firm carried on business in marketing of

edible oil. The partnership-firm gave an interest-free loan to the minor son of the appellant who is also a member of the Hindu undivided family.

The appellant made a recurring deposit with Thanjavur Permanent Bank Ltd. out of amount taken as loan from the firm. The deposits matured and

a sum of Rs. 40,000 including interest was returned on July 22, 1980. That amount was credited to the loan account standing in the name of the

son of the appellant. During the assessment year 1981-82, the appellant filled his return of income. It was pleaded that the provisions of section 64

of the Income Tax Act, 1961, were inapplicable and that the interest income out of the recurring deposit could not be subjected to tax in the hands of the appellant inasmuch as the income belonged to the minor son. That plea was rejected by the Income Tax Officer. Aggrieved by the said

order, the appellant preferred an appeal before the Appellate Assistant Commissioner of Income Tax. The appeal failed and the appellant

preferred a second appeal before the Income Tax Appellate Tribunal. By an order date October 26, 1989, the Appellate Tribunal dismissed the

appeal. The appellant, thereafter, filed an application which is available at page 8 of the typed set of papers seeking recalling or modification of the

order dated October 26, 1989, on the ground that certain mistakes had crept in the order of the Appellate Tribunal. By a communication dated

May 29, 1990, from the Assistant Registrar of the Income Tax Appellate Tribunal, the appellant was informed, in response to his letter dated

January 24, 1990, that his request to recall or modify the order of the Tribunal dated October 26, 1989, stood dismissed. Aggrieved, the appellant

filed a writ petition which was dismissed by the learned single judge. Hence, this appeal.

3. Learned counsel for the appellant had submitted before the learned single judge that the application filed by the appellant u/s 254(2) of the

Income Tax Act was dismissed without any hearing and, relying upon the judgment of the Delhi High Court in Smart (P.) Ltd. v. ITAT [1990] 182

ITR 384 , had argued that the dismissal of that application, for recalling or modification of the earlier order dated October 26, 1989, by the

Tribunal, without granting any opportunity of hearing to him, violated the principles of natural justice, thereby vitiating the order. The learned single

judge, however, found that since there had been no variation of the tax liability, by the rejection of the application, there was no necessity to

provide an opportunity to the appellant and thus there had been no violation of the principles of natural justice. Learned counsel for the appellant

has questioned that finding and has reiterated the same plea which had been advanced before the learned single judge.

4. To appreciate the argument of learned counsel, it is desirable to first notice the provisions of section 254(2) of the Income Tax Act, 1961, and

that section reads as follows :

The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee

or the Assessing Officer :

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the

assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has

allowed the assessee a reasonable opportunity of being heard.

5. A bare reading of the section shows that the Tribunal has been invested with the power to rectify its mistakes which are apparent from the

record. Rectification is, therefore, not permissible in any other case. An application for rectification cannot be treated as an appeal in disguise.

Power of rectification can be exercised only for the limited purpose u/s 254(2) of the Act. The proviso to sub-section (2) of section 254 which

makes it incumbent upon the Tribunal to issue notice to the parties comes into play only when the rectification has the effect of enhancing the

assessment of reducing the refund or otherwise increasing the liability of the assessee. In other cases, the proviso has no application. The

Legislature, thus, confined the issuance of notice and the grant of opportunity of hearing only to the specified cases detailed in the proviso and that

appears logical also because, after the parties had addressee arguments before the assessing authority, the Appellate Assistant Commissioner and

the Appellate Tribunal, the necessity of granting a hearing in an application seeking rectification of the order of the Tribunal would arise only in

cases mentioned in the proviso and not where no rectification is being made. Admittedly, the communication which was impugned in the writ

petition had neither the effect of enhancing the assessment nor reducing the refund or in any other manner increasing the liability of the assessee. By

rejecting the application seeking rectification of the order of the Appellate Tribunal, no settled rights of the appellant were altered to its prejudice;

under the circumstances, the issuance of notice or grant of a hearing was not necessary in the facts of the instant case.

6. The Delhi High Court in Smart (P.) Ltd. v. ITAT [1990] 182 ITR 384 , after analysing the provisions of section 254(2) of the Income Tax Act,

opined that, by virtue of the proviso to section 254(2), the Tribunal can pass orders on an application under that section only after granting an

opportunity to the applicant. The Delhi High Court, we find ourselves unable to subscribe to that view which runs counter to the legislative

mandate. Extension of the rule of audi alteram partem where the Legislature has confined its applicability, beyond what the Legislature provided

for, is not permissible.

7. It is settled law that the rules of natural justice can supplement the law but cannot supplant it. Where a statutory provision either specifically or

by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the Legislature and

extend the application of the rules even to the excluded categories. Where the language of the statute is clear, nothing more can be read into it and,

in any event, not for defeating the intention of the Legislature. In Swadeshi Cotton Mills Co. Ltd. v. Union of India [1981] 51 Comp Cas 210, the

apex court opined (p. 227) :

The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it.

(Per Hegde J. in A.K. Kraipak and Others Vs. Union of India (UOI) and Others,). If a statutory provision either specifically or by inevitable

implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the Legislature. Whether or not the

application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon

the language and the basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the

effect of the exercise of that power.

8. The aforesaid principle of law has received the seal of approval by a five-judge Bench of the apex court in Union of India and Another Vs.

Tulsiram Patel and Others, .

9. Compliance with the rules of natural justice is aimed at securing justice or to prevent miscarriage of justice. Where the Legislature, in its supreme

wisdom, excludes the applicant of the rules of natural justice, it is improper for the courts to ignore the mandate of the Legislature. These rules,

therefore, operate in areas not covered by any law validly made. In Union of India (UOI) Vs. Col. J.N. Sinha and Another, , their Lordships opined (headnote of AIR) :

If a statutory provision can be read consistently with the principles of natural justice, the courts should do so. But, if a statutory provision either

specifically or by necessary implication excludes the application of any rules of natural justice, then the court cannot ignore the mandate of the

Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power

conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision

conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

10. Going by the plain and clear phraseology of sub-section (2) of section 254 of the Act and the scheme of the said provision, we are clearly of

the opinion that the principles of natural justice cannot be pressed into aid in cases which are not covered by the proviso to sub-section (2) of

section 254. The purpose for which the power of rectification is conferred by section 254(2) of the Act, when considered along with the effect of

exercise of that power, also unmistakably exposes the sound logic of confining the right of hearing only to the cases covered by the proviso and not

to others. Principles of natural justice do not operate in a vacuum and their compliance depends on the facts and circumstances of each case.

11. So far as the facts of the present case are concerned, we find that the case of the appellant before the Income Tax authorities as well as before

the Appellate Assistant Commissioner was the same as was projected before the Income Tax Appellate Tribunal. The Appellant had the

opportunity before the original as well as the appellant authority. Even before the Tribunal, it had been provided with an opportunity of hearing. If

the appellant chose not to avail of the same, it has to blame itself for it. Principles of natural justice had been duly complied with at all stages till the

order was made by the Tribunal on October 26, 1989. The appellant, while filing the application for rectification, attempted to raise the same pleas

which had been raised in the appeal filed before the Appellate Assistant Commissioner as well as the Income Tax Appellate Tribunal again. The

Tribunal, obviously, did not find any mistake ""apparent from the record"" and declined to interfere, with the result that the earlier order was not altered at all. No hearing was, therefore, necessary to be provided to the appellant before the rejection of its application filed u/s 254(2). Learned

counsel was even unable to point out any such mistake which was ""apparent from the record"" and, as a matter of fact, his effort was to question

the basic findings concurrently recorded by all the authorities. The scope of an application u/s 254(2) of the Act did not permit it and, keeping in

view the limited scope of the provision, the Tribunal rightly declined to interfere with its earlier order. The learned single Judge was, therefore,

perfectly justified in dismissing the writ petition.

12. Thus, for what we have said above, we do not find any cause to interfere with the judgment of the learned single Judge. This writ appeal

consequently falls and is dismissed.

13. We would like to clarify that the reference arising out of the order of the Appellate Tribunal dated October 26, 1989, which we are informed

us still pending, shall be decided on its own merits and nothing said hereinabove should be construed as an expression of opinion on the merits of

the case.