(1990) 10 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 13800 of 1990/Writ Application No. 1017 of 1990

S. Ratnakrishnan 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 : (1992) 65 TAXMAN 232

Hon'ble Judges : As. Anand, C.J;Raju, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Govindasamy, J.—The petitioner has filed the above writ petition to issue a writ of certiorari/mandamus to quash the order of the Tribunal in IT Appeal No. 2 (Mad.) of 1987, dated 29-5-1990, and to direct the Tribunal to dispose of the miscellaneous petition filed on 24-1-1990, in accordance with law. The petitioner is an income tax assessee on the file of the ITO, Ward 1(1), Cuddalore, during the year ending 31-3-1981, relating to the assessment year 1981-82. The petitioner filed a return of income on 5-11-1982, declaring a total income at Rs. 32,420. The petitioner was a partner through its karta in the firm called, Muthukumaraswamy Chetty & Co. The firm carried on business in marketing of edible oil. It is stated that the firm gave an interest-free loan to Master Senthil Kumar, the minor son of the petitioner, who is also a member of the HUF. It is stated that the firm advanced the loan to the minor son of the petitioner, Shri Ramakrishnan, and the petitioner made a recurring deposit with Thanjavur Permanent Bank Ltd. out of the amounts taken as loan from the firm of A. Muthukumaraswamy Chetty & Co. The deposit matured on 22-7-1980 and Rs. 40,000 was returned including interest on the said amount. The amount received was credited to the loan account standing in the name of the minor son of Shri Ramakrishnan. During the assessment year 1981-82, the applicant filed his return of income and contended that the provisions of section 64 are inapplicable and that the interest income out of the recurring deposit cannot be subjected to tax in the hands of the applicant inasmuch as the income belonged to the minor son without any detriment to the HUF funds. The ITO rejected the contention raised by the petitioner and included the interest income in the hands of the petitioner HUF and assessed the tax. Aggrieved by the said order of the ITO the petitioner preferred an appeal before the AAC. The AAC also rejected the contention of the petitioner. Aggrieved by the said order, the petitioner preferred a second appeal before the Tribunal in IT Appeal No. 2 (Mad.) of 1987 and the Tribunal, by its order dated 26-10-1989, dismissed the same. Thereafter, the petitioner appeared to have filed an application on the ground that certain mistakes had crept in the order of the Tribunal and consequently the petitioner prayed that the order dated 26-10-1989, should be recalled or modified. The Tribunal, by order dated 29-5-1990, in IT Appeal No. 2 (Mad.) of 1987 informed the petitioner that the request could not be acceded to and, consequently, the application filed by the petitioner was dismissed.

2. The learned counsel for the petitioner contended that the petitioner should be given an opportunity by the Tribunal before rejecting his application. In this connection the learned counsel for the petitioner cited the decision in Smart P. Ltd. Vs. Income Tax Appellate Tribunal, wherein it was held that any order which is passed u/s 254(2) of the Act, especially when it has the effect of varying the tax liability, should be passed only after affording an opportunity to both sides of being heard. The learned counsel for the petitioner also cited the decision in CIT v. G.S.R. Krishnamurthy [1990] 83 CTR (Mad. -Trib.) 100, wherein it was held that a quasijudicial authority while disposing of a matter should give an opportunity to the parties concerned. In the instant case, the Tribunal, while disposing of the impugned order in IT Appeal No. 2 (Mad.) of 1987, provided adequate opportunity to the petitioner so as to enable the petitioner to participate in the proceedings and to adduce all that he wanted to adduce before the Tribunal and later on, the Tribunal, by its order dated 26-10-1989, in IT Appeal No. 2 (Mad.) of 1987 passed a final order. It is also stated that the petitioner has sought a reference against the said order. In the meantime, the petitioner has filed an application stating that a mistake has crept in and consequently, prayed that the order dated 26-10-1989, should be recalled or modified. It is in that application that the Tribunal, by the impugned order, informed the petitioner rejecting the request of the petitioner to recall or modify the order. The resultant position of the order appears to be that there is no variation of the tax liability and consequently there is no necessity to provide an opportunity. The decision relied on by the learned counsel for the petitioner is that, if there is any variation in tax liability, an opportunity should be given by the authorities concerned. In the instant case, there is no variation of the tax liability and, consequently, the contention put forward by the learned counsel is not sustainable. The Tribunal has rejected the request made by the petitioner and there is no infirmity whatsoever in the impugned order and, consequently,

the writ petition fails and it is dismissed.

JUDGMENT

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.

The appellant is an income tax assessee. During the year ending 31-3-1981, he filed a return of income on 5-11-1982. The appellant was a partner through its karta in a firm called Muthukumaraswamy Chetty & 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 HUF. The appellant made a recurring deposit with Thanjavur Permanent Bank Ltd. out of the amount taken as loan from the firm. The deposits matured and a sum of Rs. 40,000 including interest was returned on 22-7-1980. 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 filed his return of income. It was pleaded that the provisions of section 64 of the income tax Act, 1961 (''the Act'') 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 ITO. Aggrieved by the said order, the appellant preferred an appeal before the AAC. The appeal failed and the appellant preferred a second appeal before the Tribunal. By an order dated 26-10-1989, the 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 26-10-1989, on the ground that certain mistakes had crept in the order of the Tribunal. By a communication dated 29-5-1990, from the Assistant Registrar of the Tribunal, the appellant was informed, in response to his letter dated 24-1-1990, that his request to recall or modify the order of the Tribunal dated 26-10-1989, stood dismissed. Aggrieved, the appellant filed a writ petition which was dismissed by the learned single Judge. Hence, this appeal. The 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 Act was dismissed without any hearing and. relying upon the judgment of the Delhi High Court in Smart (P.) Ltd. ''s case (supra) had argued that the dismissal of that application, for recalling or modification of the earlier order dated 26-10-1989, 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. The learned counsel for the appellant has questioned that finding and has reiterated the same plea which had been advanced before the learned single Judge.

2. To appreciate the argument of the learned counsel, it is desirable to first notice the provisions of section 254(2) and that section reads as follows:

Orders of Appellate Tribunal- (1) ******

(2) 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.

3. 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). 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 or 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 addressed arguments before the assessing authority, the AAC and the 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 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.

4. The Delhi High Court in Smart (P.) Ltd.''s case (supra) after analysing the provisions of section 254(2) 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 has read into section 254(2) the necessity to provide a hearing even if the case is not one which was covered by the proviso to sub-section (2) of section 254. With great respect to the learned Judges of 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.

5. 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:

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, supra). 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.... (p. 227)

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, .

6. 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 application 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:

... 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. (p. 40)

7. Going by the plain and clear phraseology of sub-section (2) of section 254 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) 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.

8. 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 AAC was the same as was projected before the Tribunal. The appellant had the opportunity before the original as well as the appellate 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 26-10-1989. The appellant, while filing the application for rectification, attempted to raise the same pleas which had been raised in the appeal filed before the AAC as well as the 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). The 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) 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.

9. 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, fails and is dismissed. We would like to clarify that the reference arising out of the order of the Tribunal dated 26-10-1989, which we are informed is 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.

