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(1986) 03 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 2205 of 1979

S. Sundaram — APPELLANT

Vs

Income Tax Officer and Another — RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1987) 60 CTR 46 : (1987) 163 ITR 662 : (1986) 26 TAXMAN 125

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : P.A. Bhat, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Puttaswamy, J.—For the assessment year 1974-75, relevant to the accounting period from April 1, 1973, to March 31, 1974, the petitioner was working as processing manager in the Delhi Cloth & General Mills Co. Ltd., Delhi, drawing the salary due to him from time to time. The Delhi Cloth & General Mills Co Ltd. as the employer, deducted what it considered to be the Income Tax due from the petitioner every month and credited the same to the Government. While the petitioner was working at Delhi, he was borne on the file of the Income Tax Officer, Delhi. For the aforesaid assessment period, the employer had deducted a sum of Rs. 17,439.25 and had credited the same to the Government.

2. On July 1. 1974, the petitioner filed his return under the Act before the Income Tax Officer, inter alia, showing that the amount of Rs. 17,439.25 deducted at source by his employer and paid to the Government, was the correct taxes due from him and that he was not due in any further sum as taxes to the Government. For a variety of reasons, with which we are not now concerned, the Income Tax Officer did not complete the assessment within the time permitted by law.

3. On July 3, 1976, the petitioner tendered resignation of his employment in Delhi Cloth & General Mills Co. Ltd. and took up an employment or settled down

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in Bangalore. He made an application before the Income Tax Officer to transfer his file to the appropriate jurisdictional officer of Karnataka State. On that application, the Inspecting Assistant Commissioner by his order dated February 14, 1978, Annexure E, transferred the file to the file of the Income Tax Officer, Bangalore. Some time after the transfer of the said file to the file of the Income Tax Officer, the petitioner made a demand on September 13, 1978, Annexure F, through his chartered accountant, for refund of a sum of Rs. 863 for the aforesaid assessment year. In that letter dated September 13, 1978, the petitioner for the first time stated that on a proper computation, he had paid a sum of Rs. 863 as excess tax for the aforesaid year and the same should, therefore, be refunded to him. The said demand was followed up by another demand made through the learned counsel for the petitioner on November 7, 1978. Unfortunately, the Income Tax Officer, Bangalore, did not respond to the demands made by the petitioner on September 13, 1978, and followed up on November 7, 1978. The petitioner has approached this court on February 12, 1979, with an assertion that there has been no assessment for the aforesaid period and that he was entitled to refund of all the taxes paid under the Act and, in any event, to the refund of Rs. 863 as demanded on September 13, 1978.

4. Shri. P. A. Bhat, learned counsel for the petitioner, strenuously contends that the Income Tax Officer, Delhi, or the Income Tax Officer, Bangalore, has not made any assessment against his client for the assessment year 1974-75 within the time permitted by law and, therefore, all earlier payments made by Delhi Cloth & General Mills Co. Ltd. had to be treated as payments made or received without the authority of law and the respondents be directed to refund the whole of the taxes paid with interest due thereon under the Act. In support of his contention, Shri Bhat strongly relies on the ruling of the Supreme Court in Commissioner of Income Tax (Central), Delhi Vs. Harprasad and Co. P. Ltd., , a ruling of this court in R. Gopal Ramnaryan Vs. Third Income Tax Officer, Circle-II, Banglore, and a ruling of the Andhra Pradesh High Court in G. Lakshminarayana v. CTO [1974] 33 STC 558.

5. Shri K. Srinivasan, learned senior standing counsel appearing for the respondents, without disputing the fact the Income Tax officers, or the Income Tax Officer, Bangalore, has not made the assessment within the time permitted by law, contends that notwithstanding that illegality, this court should decline to exercise its extraordinary jurisdiction for refund of the taxes that were legitimately found due by the petitioner and had been legitimately credited by Delhi Cloth & General Mills Co. Ltd.

6. As noticed earlier, Delhi Cloth & General Mills Co. Ltd., one of the leading textile mills in the country, employing a large number of persons, having regard to the salary payable to him, computed the taxes payable by the petitioner under the Act and deducted the same as required by the provisions of the Act and remitted those amounts to the Government. As and when those deductions were made and the amounts remitted, the petitioner did not take any exception. On

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the other hand, in his detailed return filed in the proper form, the petitioner accepted the correctness of those payments and even stated that he was not liable to pay any sum to the Government and that the Government was not liable to refund any sum to him.

7. Some time in 1973, the petitioner, on further reflection and evidently on professional advice, found that he had paid a sum of Rs. 863 in excess towards taxes for the relevant assessment year and made a demand for refund of that amount only and did not make any demand for refund of all the taxes paid by him on the ground that there has been no assessment made against him.

8. Shri Bhat vehemently contends that the petitioner was totally unaware of not making an assessment till he filed his writ petition before this court and, therefore, the demands made by the petitioner through the chartered accountant or through him should not be held against him.

9. We are of the view that in a proceeding under article 226 of the Constitution, which only confers a power on this court and does not confer a right on a litigant, this court should not permit the petitioner to make an unjust enrichment on the sole ground that an authority that was competent to make the assessment and hold that the payments were legally due to the Government had failed to act in accordance with law and did not make the assessment within the time permitted by law. If this court were to help the petitioner on the ground that there was no assessment made within the time permitted by law, this court would only be shutting its eyes to the legal claims due to the Government, which have been rightly discharged from time to time by the employer and the Correctness of which had been accepted by the petitioner himself in his return filed as also in the later demands before the Income Tax Officer, Bangalore. We are firmly of the view that on these facts, article 226 cannot be pressed into service and that this court should not aid the petitioner to lay claim to more had what he himself had at a later stage, claimed before the Income Tax Officer, Bangalore.

10. In his letter dated September 13, 1978, which was followed up on November 7, 1978, the petitioner had laid claim for refund of an amount of RS. 863 and the authority did not dispute the correctness of the same. Even before us, the respondents have not disputed the correctness of the same. When that is so, we are firmly of the view that the claim of the petitioner for the refund of RS. 863 cannot be denied to him, but he is not entitled for refund of all the taxes paid by him solely on the ground that there has been no assessment made within the time permitted by law.

11. On the view we have taken, it is not necessary for us to consider the effect of the rulings relied on by Shri Bhat.

12. In the light of our above discussion, we make the following order and directions :

(i) We dismiss this writ petition so far as it relates to the refund of all the taxes

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paid by the petitioner for the assessment year 1974-75, relevant to the accounting year ending on March 31, 1974.

(ii) We declare that the petitioner is entitled for a refund of RS. 863 for the assessment year 1974-75, relevant to the accounting year ending on March, 31, 1974.

(iii) We issue a writ in the nature of mandamus to respondent No.1 to refund the aforesaid sum of RS. 863 with all expedition as is possible and, in any event, within three months from the date of this order.

13. The writ petition is, accordingly, disposed of with the above directions. We direct the parties to bear their own costs. Let a copy of this order be communicated to respondent No.1 within fifteen days from this day.

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