
(1994) 04 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 11304 of 1993

Sarswatiji Bhandar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0032

Judgement

K.S. Paripoornan, C.J.—The petitioner is an assessee to Sales-tax. We are concerned with the assessment year 1983-84. Originally, the assessment was made for the said year, by Annexure-1, on 25-3-1985. By Annexure-2, re-assessment order dated 26-3-1987, the gross turnover was enhanced from Rs. 7,85,347-76 to Rs. 11,88,627.20. In appeal, the Joint Commissioner of Commercial Taxes, by Annexure-3 dated 29-9-1989, ordered a remit. The petitioner states that this order was entered in the records on 18-2-1981. The petitioner was directed to produce the accounts by the assessing authority, by Annexure-4, dated 9-7-1992. Under the proviso to Section 24 of the Bihar Finance Act, re-assessment should have been completed within two years from the date of the communication of the order passed in appeal or review or reference. In this case, it should be on or before 18-2-1993. (Two years from the date when the appellate order was entered in the records). It has not been done. The petitioner assails the re-assessment proceedings initiated after remit, u/s 19(1) of the Act dated 9-7-1992 as illegal. According to him, the re-assessment is made as a result of the audit report. The re-assessment proceedings are attacked on two grounds: (1) The re-assessment proceedings based on the audit report is impermissible ; and (2) the re-assessment proceedings are barred by limitation.

2. The Revenue has filed a detailed counter-affidavit dated 14-2-1993. The petitioner has filed a reply-affidavit dated 1-4-1994. According to the Revenue, the petitioner filed a revision from Annexure-3 appellate order before the Commercial Taxes Tribunal which was dismissed on 21-1-1990. The said order has not been communicated to the assessing authority so far. However, the

petitioner produced a photostat copy of the said order on 3-8-1993. Even calculating the period of limitation from that date, the proceedings are not barred. The appellate authority as well as the revisional authority upheld the re-assessment proceedings initiated u/s 19 of the Act. The petitioner has not assailed the said proceedings, either by way of reference or review. Annexure-3 appellate order passed by the Joint Commissioner dated 29-9-1989 as affirmed in revision by the Commercial Taxes Tribunal dated 21-8-1990, has become final. Therein the re-assessment proceedings initiated u/s 19 of the Act has been upheld. It is not open to the petitioner to attack the re-assessment proceedings initiated u/s 19 of the Act on any ground so long as Annexure-3 appellate order as affirmed by the revisional order dated 21-8-1990 passed by the Commercial Taxes Tribunal stand. Moreover, the plea that the assessment is infirm as one based on the audit report was not urged, either before the appellate authority or before the revisional authority. The petitioner is precluded from raising such a plea, at this stage. The plea of limitation has no substance, since the revisional order dated 21-8-1990 has not been communicated to the assessing authority so far. Moreover, such a plea cannot be raised in proceedings under Article 226 of the Constitution of India. The petitioner has suppressed material facts, in that he did not disclose the filing of a revision from Annexure-3 appellate order which was disposed of on 21-8-1990. The petitioner having suppressed the said material fact is not entitled to any discretionary relief under Article 226 of the Constitution of India.

3. In the reply-affidavit, the petitioner has referred to the revision filed by him before the Commercial Taxes Tribunal and the dismissal thereof. According to him, the proceedings are infirm, since the re-assessment proceeding is based on the audit report and is also barred.

4. We heard counsel for the petitioner, Mr. S. D. Sanjay and also counsel for the Revenue Mr. Rafat Alam, Government Pleader.

5. We are of the view that there is no substance in this writ petition. In the appeal filed before the Joint Commissioner, the petitioner did not assail the re-assessment proceedings as illegal, as one based on audit report. The appellate authority upheld the proceedings initiated u/s 19 of the Act. The only plea raised was that there was no basis for the enhancement of the gross turnover from Rs. 7,85,347.76 to Rs. 11,88,627.20. The appellate authority ordered a remit to point out the basis for the fixation of the gross turnover. In the revision, the order of remit was upheld with certain modifications. That the re-assessment proceeding is infirm as one based on the audit report, is not seen to have been raised, on a perusal of the order passed in the appeal and in revision. The re-assessment order, evidenced by Annexure-2 dated 26-3-1987, which was upheld with certain modifications in the appellate order (Annexure-3) and the revisional order dated 21-8-1990 cannot be attacked after the said proceeding, as one lacking in jurisdiction on the ground that it is based on the audit report. Such a plea is not seen raised, either in the appeal or in the revision, on a perusal of the

order passed in the said proceedings. We repel the said plea.

6. Under the proviso to Section 24 of the Bihar Finance Act, the reassessment proceedings can be initiated and completed within two years from the date of communication of the order passed in appeal or revision or reference or review. It is the definite plea of the Revenue that the order passed in revision by the Commercial Taxes Tribunal dated 21-8-1990 has not been communicated to the assessing authority so far. There is no material to discredit the said plea. It is the petitioner who produced a photostat copy of the said order on 3-8-1993. The assessing authority has got two years from the date of communication of the revisional order to complete the re-assessment proceedings. That event does not happen. The plea of limitation also fails.

7. We are of the view that this writ petition assailing the notice for re-assessment u/s 19(1) of the Act dated 9-7-1992 is not maintainable. This is a case where the petitioner suppressed the filing of the revision before the Commercial Taxes Tribunal and the dismissal thereof. It is a material and vital fact in the adjudication of this case by the conduct, the petitioner has disentitled himself to any equitable relief in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India. Moreover, the proceedings are only at the notice stage. If the petitioner has got any objections, he should put forward such objections before the assessing authority in the first instance. In this proceedings under Article 226 of the Constitution of India, the petitioner is incompetent to assail the re-assessment proceedings as barred by limitation. Such a plea will not be entertained by this Court in proceedings under Article 226 of the Constitution of India. Delivering the judgment of the Constitution Bench of the Supreme Court in *Lalji Haridas Vs. R.H. Bhatt and Another*, , Gajendragadkar, C. J. stated the law thus:

Mr. Pathak for the appellant attempted to argue that the notice issued against the appellant is, on the face of it, invalid, because it is barred by time. We did not allow Mr. Pathak to develop this point, because we took the view that a plea of this kind must ordinarily be taken before respondent No. 1 himself. The jurisdiction conferred on the High Court under Article 226 is not intended to supersede the jurisdiction and authority of the Income Tax Officers to deal with the merits of all the contentions that the assessee may raise before them, and so it would be entirely inappropriate to permit an assessee to move the High Court under Article 226 and contend that a notice issued against him is barred by time. That is a matter which the Income Tax authorities must consider on the merits in the light of the relevant evidence.

The above decision is an authority for the proposition that the attack against a proceeding as barred by time cannot ordinarily be entertained in proceedings under Article 226 of the Constitution of India. The plea that the proceedings are barred is not open to the petitioner. We repel the said plea.

8, The Bihar Finance Act has provided a complete machinery for the assessee to

ventilate his grievance against any adverse order that may be passed against him. Normally, the assessee should resort to such statutory remedy. Except in rare cases resort to proceedings under Article 226 of Constitutions of India cannot be countenanced. The petitioner has not done so. He cannot be permitted to resort to Article 226 of the Constitution in the first instance. The law on this point has been succinctly stated by the learned author Durga Das Basu in his book Shorter Constitution of India (Eleventh Edition) at pages 578 and 579, thus:

When a right of liability is created by a statute which itself prescribed the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226. The High Court may, in the exercise of its discretion, decline to interfere until all the statutory remedies are exhausted....

Thus, a writ under Article 226 has been refused:

Where the petitioner has the remedies of appeal and revision under the Income Tax or other fiscal statute or Sales-tax Act to challenge the amount of assessment ; or under the Customs Act to challenge an order of confiscation or other penalty, or statute relating to election or grant of a licence.

We adopt the above statement of law as our own.

9. We hold that this writ petition is frivolous. It is dismissed.

A.K. Ganguly, J.

10. I agree.