
(1979) 08 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 171 of 1969

Shivratan G. Mohatta

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 29-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 142, 147, 148, 149

Citation : (1980) 45 STC 354

Hon'ble Judges : S.N. Deedwania, J; Kalyan Dutt Sharma, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; S.C. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Deedwania, J.—This writ petition has been filed under Article 226 of the Constitution of India by M/s. Shivratan G. Mohatta, Station Road, Jodhpur, a registered partnership firm, who carries on their business in cement, iron and steel, sanitary fittings, etc., and is an assessee under the Rajasthan Sales Tax Act. The petitioner-firm had been assessed up to the financial year 1963-64, i. e., up to the end of 31st March, 1964, by the Commercial Taxes Officer (hereinafter referred to as the "CTO"). On an anonymous complaint, the CTO, A-Circle, Jodhpur City, issued a notice dated 2nd January, 1964 (marked exhibit 1), u/s 12 of the Rajasthan Sales Tax Act (hereinafter referred to as the "Act") and under Rule 55 of the Rajasthan Sales Tax Rules (hereinafter referred to as the "Rules") for the alleged escaped turnover for the years 1958-59, 1959-60 and 1960-61. On 29th August, 1964, another similar notice (marked exhibit 2) was issued for the escaped turnover for the years 1957-58 to 1961-62. Thereafter, on 15th September, 1964, a show cause notice (marked exhibit 3) was issued calling upon the petitioner to show cause why the assessment for the years 1958-59 and 1959-60 be not reopened u/s 12 of the Rajasthan Sales Tax Act. In reply to the aforesaid show cause notice, the petitioner-firm submitted its reply

on 5th October, 1964, giving the required explanation and asserted that no turnover for those two years had escaped assessment. The CTO, in spite of detailed reply of the petitioner, insisted to make enquiry and on several occasions called the representatives of the petitioner to attend the office. On 12th March, 1965, the then CTO came to the office of the petitioner and seized some books of account and documents. The petitioner protested in vain and on 25th November, 1965, the CTO again came to the office of the petitioner and seized some more books of account and other documents. The CTO again issued a notice (exhibit 8) under Rule 55A in the prescribed form S.T. 12A dated 13th December, 1968, for the reassessment of the escaped turnover for the period 1959-60. This notice was received by the petitioner on 17th December, 1968. The petitioner submitted objections in reply to this notice under Rule 55A of the Rules and challenged the jurisdiction of respondent No. 2 for taking action u/s 12 of the Act for reassessment of the alleged escaped turnover on the ground that respondent No. 2 had no jurisdiction as the notice was issued beyond a period of 8 years. Respondent No. 2 did not drop the proceedings in spite of the specific and cogent objection as to his jurisdiction and fixed a date for reassessment. The petitioner, thereafter, filed this writ petition, inter alia, on the grounds:

(i) That the proceedings u/s 12 of the Act can only be initiated within a period of 8 years next succeeding to the year to which the tax relates. After the expiry of 8 years, the respondent has no jurisdiction to initiate the proceedings u/s 12 of the Act. The reassessment sought to be done is in respect of the turnover relating to the year 1959-60 by a notice (exhibit 8) dated 13th December, 1968. Respondent No. 2 had no jurisdiction to take proceedings u/s 12 of the Act in respect of the tax or assessment which related to the year 1959-60 as the show cause notice (exhibit 8) was issued beyond a period of 8 years next succeeding to the year to which the tax related.

(ii) The reasons contained in letter No. CTO/875 dated 13th December, 1968, supplied along with the notice (exhibit 8) showing the items for which it is alleged that it escaped assessment, relate to the year 1958-59 and, therefore, such items cannot be made a ground to initiate proceedings u/s 12 of the Act for the year 1959-60 by respondent No. 2. In any case, respondent No. 2 has not disclosed sufficient reasons for coming to a conclusion that some of the turnover for the relevant years escaped assessment.

(iii) The notice (exhibit 8) does not make substantial compliance of Rule 55A of the Rules because the reasons mentioned in the letter enclosed with the notice (exhibit 8) are no reasons at all. It is further asserted that the previous notices (exhibits 1 and 2) were not u/s 12 of the Act and the Rules framed thereunder. The notice under Rule 55A of the Rules which was to be prescribed by the rule-making authority was not prescribed at all till 31st December, 1964, when for the first time the form of the notice was prescribed as required under Rule 55A of the rules.

2. The relief sought in the writ petition is for the issue of a writ in the nature of

mandamus, prohibition or any other writ or direction or order and for quashing the impugned notice dated 13th December, 1968 (marked exhibit 8), and further for the issue of a writ or direction in the nature of prohibition restraining the respondents to take any action u/s 12 of the Act in pursuance of the impugned notice (exhibit 8) dated 13th December, 1968. Further prayer for relief is for the issue of any other writ, direction or order, which the circumstances of the case warrant.

The respondents filed a reply to the writ petition, which may briefly be summarised as follows:

3. It was not disputed that the notice in form S.T.12A was prescribed on 31st December, 1964, by introducing a new Rule 55A. It was, however, denied that the notices (exhibits 1, 2 and 3) were not valid notices because they fulfilled all the requirements of a show cause notice u/s 12 of the Act and no prejudice had been caused to the petitioner. The notices (exhibits 1, 2 and 3) though not in the prescribed form are therefore valid notices. The notice (exhibit 8) was in fact in continuation of the earlier notices as would be apparent by the letter No. CTO/875 dated 13th December, 1968, which was enclosed with the notice (exhibit 8). The notice (exhibit 8) was, therefore, not beyond the period of limitation because the proceedings had already commenced with the issue of notice (exhibit 1). In the alternative, it is asserted that reassessment to be made is for the period 1st April, 1959, to 31st March, 1960. The corresponding assessment year would be 1960-61, because the assessment u/s 10 of the Act became due only when all the returns for the quarter ending 31st March, 1960, had been filed by 30th April, 1960. The petitioner had a further right to amend the return within the next 3 months. Thus, the assessment became due for the first time in August, 1960. The reassessment proceedings had not begun. The petitioner had been served with a show cause notice only. If the petitioner is able to satisfy that no turnover for the relevant year escaped assessment, the proceedings will not be continued. In any case, the petitioner must submit to the assessing authority first and explain him his position. The petitioner should not be allowed to invoke the extraordinary jurisdiction of the Honourable High Court under Article 226 of the Constitution merely on issue of a notice.

4. We have heard the learned counsel for the parties and perused the record of the case. As a result of the submissions made at the Bar, the following points emerge for discussion:

(1) Whether the writ petition filed by the petitioner should be dismissed on the ground of delay with regard to the notices (exhibits 1, 2 and 3).

(2) Whether the objection that the assessment proceedings initiated u/s 12 of the Act against the petitioner are barred by limitation should be taken before the CTO in the first instance. .

(3) Whether the notice (exhibit 3) substantially complies with the provisions of Section 12 of the Act and, therefore, is valid.

(4) Whether the notice (exhibit 8) is in continuation of the notice (exhibit 3) and, therefore, the proceedings sought to be initiated against the petitioner are within limitation.

5. Our decision on these points is to the following effect:

Point No. 1. -- It was argued by the learned counsel for the non-petitioner that the petitioner did not claim any specific relief with regard to the notices (exhibits 1, 2 and 3) before this Court. The notice (exhibit 3) was in substantial compliance with Section 12 of the Act and, in response thereof, the petitioner filed a reply before the assessing authority and thus submitted to its jurisdiction. In any case, if the petitioner had raised this objection at the earliest, the defect could be removed by issuance of another notice in form S.T. 12A prescribed under Rule 55A of the Rules. In the present case, with regard to exhibit 3, there was a delay of about 5 years and, therefore, the writ petition should be dismissed. Our attention was invited to the following authorities in this regard:

1. Purshottamdas Chowdhury Vs. Income Tax Officer, "A" Ward,

A writ of certiorari is largely a matter of sound discretion and the writ will not be granted if there is such negligence or omission on the part of the assessee to assert his right, as taken in conjunction with the lapse of time and other circumstances, may cause prejudice to the other party. Two circumstances, always important in such cases, are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy Notices u/s 147 of the Income Tax Act, 1961, for reassessment were issued to the petitioner on 19th March, 1965. Subsequent notices were issued to the petitioner u/s 142(1) also intimating the dates of hearing. The petitioner filed a writ petition on 27th February, 1970, to quash the notices u/s 147, which were alleged to have been issued without jurisdiction:

Held, that there was such negligence and laches on the part of the petitioner, considered along with the length of time taken by him in coming to the court as would undoubtedly cause prejudice to the respondents, and the petitioner was, therefore, disentitled to the grant of writ.

2. Bishnu Charan Mohanty v. State of Orissa AIR 1973 Orissa 199.:

Following considerations would normally weigh in determining the liability of dismissal of writ petitions: (1) Law of limitation barring suit for identical relief. (2) Delay not having satisfactory explanation. (3) Length of delay and the petitioner's act in the interval affecting balance of justice. (4) Conduct making delay equivalent to waiver. (5) Realtering the position of another by granting relief would be unreasonable when the person was put in such position by the petitioner's neglect. In such cases, the court should ordinarily refuse to exercise discretion under Articles 226, 227.

3. Shyamlal v. Income Tax Officer 1974 Tax. L.R. 793.:

Where the assessee pursuant to the notices u/s 148, Income Tax Act, 1961, appeared before the Income Tax Officer and only when the decision of the Income Tax Officer was about to go against him that he thought of moving the High Court under Article 226 challenging the notices:

Held, that the application was not maintainable as there was inordinate delay in making it.

6. On the other hand, the learned counsel for the non-petitioner contended that, in a writ of prohibition, the delay never acts as a bar, a writ of prohibition will be available so long as there is something left for the writ to operate upon in a case, where the lack of jurisdiction is patent on the face of the record and drew our attention to the case of *Girindranath Paul Vs. Income Tax Officer and Others*, wherein their Lordships of the Calcutta High Court held:

that the principles laid down in the decided cases indicate that a writ of prohibition will be available so long as there is something left for the writ to operate upon. Delay in applying for such writ will be no bar if there is a patent lack of jurisdiction in the authority against which the order is sought and the writ will issue almost as a matter of course and right. If, however, the lack or usurpation of jurisdiction is not patent on the face of the record, but latent, that is, not apparent, and requires further examination of records and investigation of facts, and there is delay in applying for a writ, issue of writ in such circumstances will be discretionary with the court depending on misconduct, laches or acquiescence on the part of the applicant unless it would be unjust for the court to interpose.

7. In the present writ petition, the case of the petitioner is of patent lack of jurisdiction and the assessment proceedings have not come to an end against him. It appears that respondent No. 2 was equally guilty of laches inasmuch as the proceedings in pursuance of the notice (exhibit 3) issued in the year 1964 are still pending before him. In these circumstances, in our opinion, delay is not a bar to the present writ petition.

Point No. 2. -- It is argued by the learned counsel for the non-petitioner that the question of limitation with regard to the notice (exhibit 8) should be raised by the petitioner before the assessing authority (CTO). He cannot invoke the extraordinary jurisdiction of this Court by way of a writ. The argument is substantiated by the following authorities:

1. *Lalji Haridas Vs. Income Tax Officer and Another*,

The question whether assessment proceedings initiated against a person are barred by limitation u/s 34(3) of the Indian Income Tax Act, 1922, can and ought to be raised by him before the Income Tax Officer: that is not a point which can be legitimately agitated in writ proceedings.

2. *Lalji Haridas Vs. R.H. Bhatt and Another*,

The jurisdiction conferred on the High Court under Article 226 of the Constitution of India 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.

3. Income Tax Officer, Kottayam Vs. R.M. Subramania Iyer,

A plea that the notice issued on the assessee by the Income Tax Officer u/s 147 of the Income Tax Act, 1961, is barred by limitation cannot be raised in writ proceedings, since it is a matter well within the jurisdiction and competence of the Income Tax Officer to decide.

4. Deepchand Daga v. Income Tax Officer, Raipur [1970] 77 ITR 66,1.:

Whether an assessment proceeding initiated against a person is barred u/s 149(1)(b) of the Income Tax Act, 1961, can and ought to be raised by him before the Income Tax Officer: that is not a point which can be legitimately agitated in writ proceedings.

8. We have considered these authorities and, for the reasons contained therein, are of the opinion that the objection that the notice u/s 12 of the Act issued to the assessee is barred by limitation cannot be raised in writ proceedings, since it is a matter within the jurisdiction and competence of the CTO.

9. The learned counsel for the petitioner drew our attention to Fazlur Rahman Vs. Income Tax Officer, A Ward, wherein a plea of limitation was allowed to be raised. We have gone through this authority but the ratio of it is not to the effect that such a point can be allowed to be raised in a writ petition. The reason is that it was not contended before their Lordships of the Allahabad High Court that such a point ought to have been raised before the assessing authority and, on such a point of limitation, the extraordinary jurisdiction of the High Court in a writ proceeding could not be invoked. We are, therefore, of the view that the petitioner is not entitled to raise the question of limitation u/s 12 of the Act with regard to the notice (exhibit 8) by way of a writ petition.

10. Points Nos. 3 and 4. -- At the outset, it may be stated that the learned counsel for the non-petitioner, more or less, conceded that the notices (exhibits 1 and 2) were neither in the prescribed form nor in substantial compliance with the prescribed form S.T. 12A under Rule 55A of the rules. It is, however, vehemently contended that the notice (exhibit 3) was in substantial compliance with Section 12 of the Act and, therefore, it could not be said to be invalid and, therefore, no writ should be issued in favour of the petitioner. On the other hand, it is submitted by the learned counsel for the petitioner that the notice (exhibit 3) may be in substantial compliance with Section 12 of the Act but none the less it was not in the prescribed form S.T. 12 A under Rule 55A of the Rules and,

therefore, it was invalid.

11. Both the learned counsel relied upon a decision of the Division Bench of this Court in Abbasali Asgarali v. Sales Tax Officer, Pali D.B. Writ Petition No. 76 of 1963 (Rajasthan High Court). But we do not think it necessary to express any opinion on or to decide the question regarding the validity of the notices (exhibits 1, 2 and 3) and whether the notice (exhibit 8) is in continuation of the notice (exhibit 3) because, in the writ petition, the petitioner did not claim any relief for quashing these earlier three notices.

12. For the foregoing reasons, we find no force in this writ petition and dismiss the same. However, there will be no order as to costs in the peculiar circumstances of the case.