(1999) 01 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 38098 of 1998

Shree Someshwara Farmers Co-operative Spinning Mills Ltd. APPELLANT

Vs

Joint Commissioner of Income Tax (Assessment) and Others RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:
Income Tax Act, 1961 — Section 143 (1) (a), 156, 226 (3)

Citation : (1999) 236 ITR 829

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : E.S. Kiresur, for the Appellant; E.R. Indra Kumar, for the Respondent

Judgement

V.K. Singhal, J.—By this petition, notice issued u/s 226(3) of the Income Tax Act, 1961, has been assailed. Argument of learned counsel for the petition is two fold.

2. First, it is stated that against the order passed u/s 143(1)(a) an appeal was preferred to the appellate authority. The order u/s 143(1)(a) was passed by the assessing authority at Hubli but because of change of place of business, the appeal effect order has been passed by the assessing authority at Belgaum. It is submitted that no notice of demand as contemplated u/s 156 has been issued and as such the recovery proceedings u/s 226(3) could not have been initiated. Reliance is placed on the judgment given in the case of Manmohanlal and Others Vs. Income Tax Officer, Ward-E, City Circle, Cuttack, , wherein it was observed by the apex court that the court has jurisdiction to examine and decide as to whether there has been a proper service of demand notice and the direction for payment could be made only if the court is satisfied that the proper notice has been served.

3. Secondly, the petitioner cannot move the Income Tax Appellate Tribunal where the appeal is pending since he has moved the Commissioner of Income Tax for not initiating the recovery proceedings and as such the coercive steps u/s 226(3) should not be taken during the pendency of the application before the

Commissioner of Income Tax.

4. I have considered over the matter. The provisions of Section 143(1)(a)(i) provide that if any tax or interest is found due on the basis of the return after adjustment of the tax liability deducted or paid, an intimation is required to be sent to the assessee and that intimation is deemed to be a notice of demand issued u/s 156. Section 156 provides for issue of notice of demand. The order u/s 143(1)(a) was passed on November 3, 1994. The order of the Commissioner of Income Tax (Appeals) was passed on June 26, 1995, and the appeal effect order was passed on July 27, 1995 (annexure-C). According to annexure-C a sum of Rs. 4,50,841 is payable. A revised challan in respect thereof was issued. But no demand notice was issued. In accordance with the provisions of Section 143(1)(a)(i) the intimation is deemed to be a notice of demand u/s 156 and the appeal effect order takes the same character as the original order passed u/s 143(1)(a). u/s 143(1)(b) revised intimation in pursuance of the appellate order is contemplated. After the decision of the apex court in the case of Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, , the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, was passed which contemplated that when the dues are reduced in appeal it is not necessary for the taxing authority to serve upon the assessee a fresh notice of demand. The proviso to Section 220(2) also provides that where as a result of the order u/s 250 the amount on which interest was payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded. In the intimation sent u/s 143(1)(a) dated November 30, 1994, a note is given that this intimation is deemed to be a notice of demand u/s 156 and the amount is required to be paid within 30 days of the service of the intimation. This was not objected to earlier and, therefore, cannot be objected to at this stage. Even on merits, the fiction created for treating the intimation u/s 143(1)(a) dispenses with the requirement of issuing notice of demand u/s 156. All the machinery provisions of recovery of tax assessed are applicable to the tax for which intimation only has been given. The contention, therefore, that the tax has not become due is not correct. The decision given in the case of Manmohanlal and Others Vs. Income Tax Officer, Ward-E, City Circle, Cuttack, referred to above is not applicable to the facts of the present case.

5. The other contention which is raised is regarding the application which is pending before the Commissioner of Income Tax cannot also be considered at this stage. It was for the petitioner to have approached the Tribunal when the second appeal was pending before it. There is no restriction in moving the application for stay before the Tribunal even if the application is pending before the Commissioner where the appeal is pending.

6. In these circumstances, this court cannot under extraordinary jurisdiction interfere with the recovery proceedings.

7. The petition is dismissed.

