
(1974) 10 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6914 of 1973

Smt. Mohindar Kaur

APPELLANT

Vs

Central Government and Others

RESPONDENT

Date of Decision : 29-10-1974

Acts Referred:

Income Tax Act, 1961 — Section 250, 251
Income Tax Rules, 1962 — Rule 46A

Citation : (1976) 104 ITR 120

Hon'ble Judges : Satish Chandra, J;K.B. Asthana, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bharatji Agarwal, for the Appellant; R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Income Tax Officer, Kanpur, fixed February 27, 1973, for the hearing of the petitioner's cases for the assessment years 1967-68, 1968-69 and 1969-70. The petitioner's case is that his pairokar could not attend the hearing of the case on that date. The Income Tax Officer passed three assessment orders for each of the assessment years in question. He added certain cash deposits to the assessable income of the petitioner as income from undisclosed sources. Aggrieved, the petitioner filed three different appeals. At the hearing of the appeals the petitioner desired to produce additional documentary evidence to disprove the finding with regard to the cash deposits. The prayer for production of additional evidence was, however, refused by the Appellate Assistant Commissioner on the ground that the case of the assessee was not covered by any of the provisions of rule 46A of the Income Tax Rules.

2. The assessee has filed the present petition to challenge the validity of rule 46A. According to him, rule 46A was ultra vires sections 250 and 251 of the Income Tax Act.

3. Section 250 provides an appeal to the Appellate Assistant Commissioner

against, inter alia, an assessment order. Sub-section (4) of this section provides that the Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income Tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner. Sub-section (5) provides that the Appellate Assistant Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

4. Section 251 enumerated the powers of the Appellate Assistant Commissioner. The Explanation added to Sub-section (2) of this section provides that in disposing of an appeal the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him.

5. The Appellate Assistant Commissioner could, while disposing of an appeal, make such inquiry as he thought fit. He could permit a fresh or new ground to be raised in the appeal.

6. Rule 46A was added to the Income Tax Rules with effect from 1st April, 1973. It provides:

"46A. Production of additional evidence before the Appellate Assistant Commissioner.--(1) The appellant shall not be entitled to produce before the Appellate Assistant Commissioner any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Income Tax Officer, except in the following circumstances, namely:--

(a) where the Income Tax Officer has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Income Tax Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Income Tax Officer any evidence which is relevant to any ground of appeal ;

(d) where the Income Tax Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under Sub-rule (1) unless the Appellate Assistant Commissioner records in writing the reason for its admission.

(3) The Appellate Assistant Commissioner shall not take into account any evidence produced under Sub-rule (1) unless the Income Tax Officer has been allowed a reasonable opportunity-

(a) to examine the evidence or document or to cross-examine the witness

produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Appellate Assistant Commissioner to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Income Tax Officer) under Clause (a) of Sub-section (1) of Section 251 or the imposition of penalty u/s 271."

7. Sub-rule (1) of the said rule lays down the circumstances in which alone the appellant is entitled to produce additional evidence. Sub-section (4) preserves the power of the Appellate Assistant Commissioner to make further inquiry as contemplated by Section 250 of the Act. Thus, it is clear that no part of rule 46A whittles down or impairs the power to make further inquiry conferred upon the Appellate Assistant Commissioner by Section 250 of the Act. Similarly, Sub-section (5) of the said, section confers a power on the Appellate Assistant Commissioner to permit the appellant to raise a fresh point. This power has not been even touched by rule 46A. Previously, the appellant had no right to adduce additional evidence. The Appellate Assistant Commissioner could permit the production of additional evidence if he thought it was necessary to enable him to dispose of the appeal, or if he thought it fit to make further inquiry ; but under Sub-rule (1) of rule 46A the appellant had a right to produce additional evidence in the circumstances mentioned in its various clauses.

8. We are unable to agree with the submission that rule 46A or its sub-clauses is ultra vires Section 250 or 251 of the Act. The rule does not affect the power of the Appellate Assistant Commissioner conferred upon him by that rule. It in addition gives a right to the appellant in the matter of production of additional evidence.

9. The learned counsel for the petitioner did not take up before us any question relating to the merits of the appellate order because an appeal is pending before the Tribunal.

10. This petition fails and is, accordingly, dismissed with costs.