
(1984) 03 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 604 of 1982

TESSY KURUVILLA

APPELLANT

Vs

AGRL. INCOME TAX OFFICER.

RESPONDENT

Date of Decision : 10-03-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1985) 45 CTR 225

Hon'ble Judges : K. S. Paripoornan, J

Bench : Division Bench

Judgement

K. S. Paripoornan, J. - The petitioner is an assessee to Agrl. IT. For the year 1976-77 she was assessed to Agrl. IT by Ext. P1 order dt. 6-6-1979. The order was passed under s. 18(4) of the Act, since the petitioner neither filed the return nor filed any objections to the pre-assessment notice. The revision filed before the 2nd respondent was dismissed by Ext. P2 order dt. 22-10-1981. According to the petitioner both Exts. P1 and P2 orders are illegal and violative of natural justice. Before passing Ext. P1 assessment order the objections filed by her were not considered. Before passing Ext. P2 order no notice was served on her and she was not heard. No sufficient opportunity was afforded to the petitioner to produce relevant documents. In this original petition, the petitioner assails Exts. P1 and P2 orders. The petitioner also attacks s. 34, 2nd proviso to the Agrl. IT Act as ultra vires and violative of Art. 14 of the Constitution of India. It is stated that there is no obligation for the revisional authority to hear the petitioner before passing an order in revision. In the revision, no prejudicial order shall be passed without hearing the petitioner or giving her reasonable opportunity. But an order declining to interfere shall not be deemed to be prejudicial to the assessee. So, when an order is passed in revision declining to interfere, the assessee need not be heard or given an opportunity for being heard. The assessee has no right to resort to this Court under s. 60(2) of the Agrl. IT Act in view of s. 34 second proviso and s. 60(2) of the Act. This is ultra vires and violative of "fair hearing" and Art. 14 of the Constitution of India.

2. On behalf of the respondents, a detailed counter-affidavit has been filed dt. 10-4-1984. Exts. P1 and P2 orders are sought to be sustained on the ground that they were passed after due notice and opportunity given to the petitioner and the assessment was completed under s. 18(4) of the Act in view of the default committed by the petitioner. It is also definitely stated in paragraphs 3 and 4 of the counter-affidavit that many opportunities were afforded to the petitioner and she did not avail of the same. The contention that no reasonable opportunity was afforded to the petitioner before rendering Exts. P1 and P2 is without force. It is also denied that the 2nd proviso to s. 34 of the Act is ultra vires or violative of Art. 14 of the Constitution of India.

3. Secs. 34(1) and (2) of the Agrl. IT Act is as follows :

"34. Revision. - (1) The Commissioner may, of his own motion or on application by an assessee, call for the record of any proceeding under this Act which has been taken by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard :

Provided further that an order passed declining to interfere shall not be deemed to be an order prejudicial to the assessee.

(2) Any order passed under sub-section (1) shall be final subject to any reference that may be made to the High Court u/s 60."

Sec. 60(2) of the Agrl. IT Act is to the following effect :

"60(2). Within sixty days of the date on which he is served with a notice of an order u/s 34 enhancing an assessment or otherwise prejudicial to him, the assessee in respect of whom the order was passed may, by application, accompanied by a fee of fifty rupees, require the Commissioner to refer to the High Court any question of law arising out of such order and the Commissioner shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it with his opinion thereon to the High Court."

It is well settled by the decisions of Courts, that an order will be considered to be prejudicial to the assessee "only when he is, as the result of it, in a different and worse position than that in which he was placed by the order under review". If the order passed in revision does not worsen the position of the assessee, for instance where the Commissioner merely rejects the revision petition, the order will not be deemed to be prejudicial to the assessee. CIT v. Tribune Trust 16 ITR 214, Mrs. Parvathy Sankaran and Others Vs. Commissioner of Income Tax, , N.S. Kantam Vs. Agricultural Income Tax Officer, Ootacamund, . N.N. Seshadrinathan Vs. State of Madras, , M.V.S. Kathirvelu Nadar Vs. Commissioner of Agricultural Income Tax Madras, and Sankaran Nair v. Commr. of Agrl. IT ILR (1973) Ker 428. It is too late in the day to contend otherwise.

4. The power conferred on the Commr. of Agrl. IT under s. 34 of the Act is a revisional power. The extent of the power is also specified therein. Prima facie there are no words of limitation. But the title or heading to the section is styled as "Revision". This is a key to understand the scope of the power vested in the Commissioner under s. 34 of the Act. It is well settled law that there is difference between an "appeal" and revision". An appeal is a re-hearing of the matter by the Appellate Authority. Generally, the revisional jurisdiction is given to a superior Court or authority so that it can satisfy itself whether the order attacked or impugned is according to law. As observed by V. Balakrishna Eradi, J., (as he then was) in delivering the judgment in Doraswami Chettiar v. Nhandammadan Kunhiraman 1969 K LJ 227 :

"But there is nonetheless an essential distinction between an appeal and a revision, a distinction based on difference implicit in the two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has power to review the evidence subject to the statutory limits prescribed. But in the case of a revision, even where the revisional authority is empowered to examine the propriety of the order impugned before it, its jurisdiction does not extend to a complete reopening and rehearing of the case and reviewing the entire evidence with a view to substitute the findings arrived at by it in the place of those recorded by the subordinate tribunal."

In Hari Shankar v. Rao Girdhari Lal Chowdhury AIR 1963 SC 698 the Supreme Court said :

"The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in same way as we find, has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law."

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"The phrase "according to law" refers to the decision as a whole, and is not to be equated to error of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law".

In AIR 1963 SC 698, their Lordships concurring with the judgment of the Bombay High Court in Bell & Co. Ltd. v. Waman Hemraj AIR 1938 Bom 223, wherein, the words "according to law" occurring in s. 25 of the Provincial Small

Cause Courts Act was construed, detailing the cases wherein, interference was justified, held :

"..... but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere."

It should be noticed that the enumeration aforesaid is not exhaustive. This decision was cited with approval in the later decisions, V.K. Verma Vs. Radhey Shyam, and Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others, . The principles laid down in the above decisions have got relevance in construing s. 34 of the Act.

5. It is true that the jurisdiction vested in the Commissioner under s. 34 of the Act is a discretionary one. The Commissioner exercises a quasi judicial function. He has to exercise the power in accordance with law. Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, . The Commissioner is not bound to interfere, if the order attacked is "in accordance with law". Even otherwise, the Commissioner may refuse to interfere in a case where, for reasons stated, the assessee has disintitiled himself to assail the order impugned or to get the relief at the revisional stage by his own conduct. This is so because the power to revise is discretionary. It is true that before passing the order against the assessee, he will be given an opportunity for being heard as provided by the first proviso to s. 34 of the Act. That is in accord with the principles of natural justice. The second proviso only provides that if a revision is rejected, it shall not be deemed to be an order prejudicial to the assessee. The said proviso should be read along with s. 60(2) of the Act. The effect is only to a limited extent - it will not be open to the assessee to invoke s. 60(2) of the Act, and to initiate any proceeding for reference to the High Court any question of law, where the Commissioner merely confirms the orders of the subordinate authority and refuses to interfere in the matter. That is implicit in the context of the revisional jurisdiction. Nothing that is contained in the second proviso to s. 34 of Act abrogates the provision for hearing or reasonable opportunity to be afforded to the assessee under s. 34(1) of the Act. So, understood I fail to understand how the second proviso to s. 34(1) of the Act is ultra vires or violates Article 14 of the Constitution of India. I reject the plea of the petitioner.

6. The files relating to the asst. yr. 1976-77 were placed before me by the Government Pleader. The petitioners counsel had an opportunity to go through the relevant files. It could be seen from the files that due notice and opportunity were given to the petitioner both by the assessing authority and also by the revisional authority. The petitioner having failed to avail the opportunity afforded

to her, cannot turn round and attack Exts. P1 and P2 orders on the ground that no reasonable opportunity was afforded to her.

7. There is no error of law or other jurisdictional error or illegality in Exts. P1 and P2 orders. They are valid and legal. The original petition is without force. It is dismissed with costs.