
(1978) 08 BOM CK 0023
In the Bombay High Court
Case No : Misc. Petition No. 21 of 1966

The Bombay Wollen Mills Pvt. Ltd.

APPELLANT

Vs

M.R. Bastikar

RESPONDENT

Date of Decision : 09-08-1978

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1979) 10 CTR 248

Hon'ble Judges : S.C. Desai, J; R.M. Kantawala, J

Bench : Division Bench

Judgement

Desai, J.—This petition has been referred to a Division Bench of disposal. The Petitioner has impugned two notices, both dated 6th November, 1965, Exhibit "F" (Collectively) to the petitioner, issued by the respondent to the Petition, in which it was stated that in the view of the Income Tax Officer the petitioner's income for the assessment years 1961-62 and 1962-63 had escaped assessment within the meaning of s. 147 of the Income Tax Act, 1961. The petitioner thereafter carried on certain correspondence. The answer to this correspondence was not satisfactory, and hence the petition. According to the petitioner the impugned notice are ultra vires, illegal in excess and without jurisdiction and/or of jurisdiction on the several grounds set out and summarized in paragraph 11 of the petition.

2. Two replies to the petition have been filed; one was filed by S. S. Inamdar, Income Tax Officer, Companies Circle IV(6), who at the time of making the affidavit was exercising jurisdiction over the petitioner company. He, however, was not the respondent to the petition and obviously not the officer who had issued the impugned notices. Accordingly the petitioner in its rejoinder objected that Inamdar was not competent to make a reply. In view of this objection, it appears, the respondent filed his affidavit dated 5th January 1970 giving what, according to him, was the information in his possession which and led to the issue of the two notice (Exhibit "F" collectively). Annexed as Exhibit "A" to the

said affidavit of the respondent is the local audit report, which constituted principally the "information" as mentioned in his affidavit.

3. In both the affidavits, however, a plea has been taken that the petitioner should not be permitted to resort to Article 226 of the Constitution by passing and short circulating the normal machinery and hierarchy of Tribunal provided under the Income Tax Act.

4. We have gone through the averments made in the petition. In our opinion, there are no special circumstances or special reasons which would induce us to adopt what we would characterise as the unusual course in permitting a direct challenge to the issue of the two notices under Article 226 of the Constitution by passing the ordinary machinery of appeals provided under the Income Tax Act. As a matter of fact, the objection urged by the petitioner will have to be gone into by the Income Tax Officer at the stage of making re-assessment; and if these objections are overruled and the ultimate order affects the petitioner adversely, the petitioner will have the remedy of going in appeal to the Appellate Assistant Commissioner and thereafter in second appeal, if necessary to the Tribunal. If any question of law is involved in the order of the Tribunal, a reference can be made to the High Court under s. 256 of the Income Tax Act, 1961. The point as to the purported invalidity of the notices will be gone into, if required, at all these stages.

5. As earlier stated, we find no special circumstances which would induce us to intervene directly and quash the notices under Article 226 of the Constitution of India. All the necessary material is not on record and further findings may be required to consider adequately all the aspects of the questions involved.

6. In the result, we think this is a fit case in which for the reasons earlier indicated the Rule ought to be discharged and the interim injunction vacated. There will be orders accordingly.

7. The parties, however, will bear their own costs of the petition.