(1995) 10 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4226 of 1980

The Faridabad Complex Administration — APPELLANT

Vs

The Commissioner and Others — RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:
Faridabad Complex (Regulation and Development) Act, 1971 — Section 78

Citation : (1996) 112 PLR 352

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Rakesh Garg, for the Appellant; M.L. Sarin and Rahul Rathore, for the Resp. No. 3, for the Respondent

Judgement

G.S. Singhvi, J.—The petitioner has challenged the order (Annexure P-5) dated 30.5.1980 passed by the Commissioner, Ambala Division, Ambala, whereby he quashed the order passed by the Administrator, Faridabad Complex Administration, Faridabad assessing the property of respondent No. 3 to a value of Rs. 3,10,111/- for the purpose of house-tax for the year 1979-80 as well as the demand notice issued by the petitioner.

2. The petitioner has been established under the Faridabad Complex (Regulations and Development) Act, 1971 (for short the 1971 Act). u/s 22 of the 1971 Act, the petitioner submitted a proposal to the State Government for imposing tax on the land and buildings situated within the limits of the petitioner at the rate of 10 per cent of the annual value of the properties as defined in the Haryana Municipal Act, 1973 (for short, the 1973 Act). This proposal was accepted by the Government as would appear from the notification Annexure P-1dated 30.7.1975. Thereafter, a notice dated 25.6.1979 was issued to the respondent No. 3 u/s 78 of the 1973 Act calling upon it to show cause as to why its property be not assessed at Rs. 3,10,111/-. Respondent No. 3 submitted its objection vide Annexure P-2 and pleaded that it was not liable to be assessed for tax being a research institute established for purely scientific research and educational

purpose. The Assessing Authority passed the order dated 20.8.1979 (Annexure P-3) and rejected the objection of respondent No. 3 on the ground the objection was not against the amount of assessment but against the assessment itself. This was followed by a demand notice dated 20.11.1979 calling upon the respondent No. 3 to pay Rs. 31,011.10 as house tax for the year 1979-80. This notice was served upon respondent No. 3 on 22.11.1979. On 19.12.1979 respondent No. 3 filed an appeal u/s 100 of the 1973 Act. After giving notice to the petitioner and hearing the parties, the respondent No. 1 accepted the appeal filed by respondent No.3 and quashed the assessment as well as demand notice.

4. Principal argument of the learned counsel for the petitioner is that the appeal filed by respondent No. 3 on 19.12.1979 was a barred by time in so far as the order Annexure P-3 is concerned because an appeal could be filed against the order of assessment within thirty days, whereas the appeal was filed after almost four months of the passing of the order and no prayer for condonation of delay was made and that although this point was specifically raised before the Appellate Authority the said authority has not at all decided the objection raised by the petitioner. Learned counsel argued that the order Annexure P-3 was passed in the presence of the representative of the respondent No. 3 and, therefore, he must be deemed to be aware of the contents of the order passed by the Assessing Authority and therefore, there could be no justification for overlooking the period of limitation prescribed for filing of the appeal. Learned counsel argued that in the appeal. Learned counsel argued that in the appeal (Annexure P-4) the respondent No. 3 did not challenge the order of assessment and therefore, the appellate authority was not justified in quashing the assessment order learned counsel further argued that respondent No. 3 cannot claim exemption in terms of proviso (1) of the scheme appended to the notification (Annexure P-l) because it is not a registered educational institution. According to the learned counsel the respondent No. 3 is purely a research institute established by those engaged in the manufacture of cement and such institution cannot claim itself to be an educational Institution.

5. Shri M.L. Sarin, appearing for the respondent No. 3 argued that after the respondent No. 3 had submitted its objection to the notice issued by the petitioner, no order was communicated to the respondent No. 3 and it came to know of the order (Annexure P-3) only on 22.11.1979 when it received demand notice dated 20.11.1979, and therefore, the appeal filed on 19.12.1979 was within limitation. Learned counsel submitted that the Appellate Authority felt convinced that the objection of limitation was thoroughly misconceived and, therefore, it proceeded on assumption that the appeal was within limitation. Shri Sarin further argued that the petitioner did not comply with the mandatory requirement of Section 79(2) of the 1973 Act and, therefore, there was no justification for the petitioner to raise objection of limitation. Another argument of Shri Sarin is that the Assessing Authority has not given any cogent reason for rejecting the objection raised by the respondent No. 3 regarding non-applicability of the first part of the notification Annexure P-l and has brushed aside its claim

that being educational institution, respondent No. 3 was not liable to pay tax. Shri Saron referred to the judgment (annexure R-2) dated 23.8.1984 as well as the judgment (Annexure R-5) dated 21.2.1985 passed respectively by the Senior Sub Judge, Faridabad, in a suit for recovery filed by respondent No. 3 against the Assessing Authority, Excise and Taxation Officer and the Collector, Faridabad on the ground that respondent No. 3 was an educational institution and was exempt from payment of taxes under the Punjab Urban Immovable Property Tax Act, 1940. According to the learned counsel, these two decisions conclusively establish that the respondent No. 3 has been judicially recognised as an educational institution and, therefore, there could be no justification for imposing tax on it on the basis of notification (annexure P-1).

6. Though the learned counsel for the petitioner is right in contending that the Appellate Authority has not decided the objection raised by the petitioner that the appeal filed by the respondent No. 3 was barred by limitation but it is not possible to ignore the fact that the specific plea raised by respondent No. 3 regarding non-communication of the order (Annexure P-3) has remained unrebutted. Therefore, the argument of Shri Sarin that respondent No. 3 had filed appeal within 30 days of the receipt of the notice dated 20.11.1979 and, therefore, it was within limitation merits acceptance. Therefore, it is not possible to set aside the order (Annexure P-5) only on the ground that the Appellate Authority did not decide the objection of the petitioner regarding the bar of limitation.

7. Notwithstanding the aforesaid contentions. While the Assessing Authority has passed an arbitrary and cryptic order rejecting the objection of the respondent No. 3 against the notice or assessment by saying that the objection is against the assessment and not against the amount of assessment, the appellate Authority has also not given any reason for recording one line conclusion that the respondent No. 3 is a technical educational institution and, therefore, in terms of the notification (Annexure P-l) on house tax could be imposed on its properties. In my opinion, both the authorities have singularly failed in directing their attention to the crucial issue-whether the respondent No. 3 could be treated as an educational institution within the meaning of proviso (1) of the Schedule appended to the notification dated 30.7.1975. No doubt the Memorandum of Association of respondent No. 3 shows that one of its objects is to encourage and foster education of persons engaged in or likely to be engaged in the trade of cement and industry and to maintain schools and grant scholarship connected with the purpose of the Association and there may be some substance in the claim of respondent No. 3 that a broader meaning should be given to the word "educational" used in the aforesaid proviso but this is a matter which requires a deeper examination and proper decision by the Assessing Authority before any order could be passed holding the respondent No. 3 liable to pay taxes.

8. In view of the above discussion, the only appropriate course is to quash, both the Annexure P5 as well as Annexure P3 and to remand the case to the

Assessing Authority-cum-Administrator, Faridabad Complex Administration to give a fresh opportunity of showing cause to respondent No. 3 regarding its liability to be assessed for house-tax in terms of Annexure P1 and pass fresh order after considering the objection raised by respondent No. 3 against the ''proposed assessment and its claim for exemption to the notification. Respondent No. 3 shall be free to submit fresh written objection/reply in response to the notice which the petitioner may issue after the remand of the case. The Assessing Authority should consider the entire material placed before it by respondent N. 3 and then decide the matter in an objective manner without being influenced by the orders Annexures P3 and P5 or any observation made in this order. The respondent No. 3 is directed to appear before the Administrator, Faridabad Complex Administration, Faridabad, on 11.12.1985. Ordered accordingly.

9. The writ petition is decided in the manner indicated above.

10. The parties are left to bear their own costs.

