

(2004) 01 RAJ CK 0048

In the Rajasthan High Court

Case No : Spl. Appeal (Writ) No's. 138 to 147 of 2003 and Civil Misc Stay
Appeal No's. 785 to 788 and 790 to 795 of 2003 in Civil Writ Petition
No's. 1149 to 1152 and 1336 to 1341 of 2002

Udaipur Mineral Development Syndicate (P) Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 148, 151, 250, 252, 260

Citation : (2004) 189 CTR 343 : (2004) 269 ITR 279

Hon'ble Judges : Shashi Kant Sharma, J; S.K. Keshote, J

Bench : Division Bench

Advocate : R.K. Yadav, for N.M. Ranka, for the Appellant; J.K. Singhi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—A request has been made on behalf of the appellant in these matters that Shri N.M. Ranka, senior advocate, is not available and thus, the hearing thereof may be deferred.

2. We do not find any justification in this prayer made for deferment of hearing of these appeals. There are other advocates on behalf of the appellants as appears from the title of the special appeals. As per the title, Sarva Shri J.K. Ranka, Sanjeev Kumar Singhal, R.K. Yadav, Sunil Jain, Naresh Kumar Gupta and Vijay Choudhary are the advocates for the appellant and where Shri N.M. Ranka, senior advocate, is not available, either of these advocates should have come prepared to make submissions or the appellant should have made alternative arrangements for argument of the matters. Accordingly, this request made for adjournment of the matters is declined.

3. Since all the matters are similar for the decision of these special appeals, which arise out of the common judgment of the learned single Judge, the facts

are taken from D.B. Special Appeal (Writ) No. 138 of 2003.

4. In the writ petitions, out of which these special appeals arise, challenge was made by the appellant, a private limited company, to the notice dt. 8th Jan., 2002, issued to it by the respondent No. 1, the Asstt. CIT, Circle-I, Jaipur u/s 148 of the IT Act, 1961 (for short, "the Act, 1961").

5. The appellant-assessee was called upon to furnish a return within 20 days from the date of service thereof so as to reassess the income within the meaning of Section 147 of the Act, 1961. This notice is there on the record of the writ petition as Annex. 1. This notice contained an endorsement/note that it is being issued after obtaining the necessary sanction of the Addl. CIT, R-1, Jaipur/the Central Board of Direct Taxes.

6. The validity of this notice is assailed on the ground that it is without jurisdiction, illegal, inoperative, invalid and ineffective in the law.

7. Another ground raised to challenge this notice that it is bad on account of non-sanction as required u/s 151 of the Act, 1961.

8. After receipt of the notice of the writ petition, it is true that the Department did not file reply thereto, but raised a preliminary objection regarding maintainability of the writ petition in writing.

9. It is not in dispute that in response to the notice dt. 8th Jan., 2002 (Annex.-1), the appellant made a representation dt. 13th Jan., 2002 (Annex-2), which is pending for decision before the AO.

10. We are satisfied that the appellant has got a statutory remedy against the reassessment proceedings initiated against it; filed objections against reopening notice u/s 148 of the Act, 1961, and the appellant has already filed its representation which is pending for consideration; secondly, the appellant has got right of appeal before the CIT(A), thereafter before the Tribunal and thereafter before this Court, if it is aggrieved of the judgment/order under Sections 250, 252 and 260 of the Act, 1961.

11. In fact, the appellant is making all attempts not to permit the assessing authority to proceed in the matter. By filing the writ petitions it has attempted to stall the final adjudication of the matter.

12. The learned counsel for the Revenue contended that these matters are squarely covered by the decision of this Court in the case of VIMAL CHANDRA GOLECHA Vs. Income Tax OFFICER, CENTRAL CIRCLE-I, AND OTHERS., and Rajan Products v. Union of India and Ors. (2001) 24 Tax World 422.

13. The learned single Judge has considered each and every aspect of the matter and not found it to be a fit case to make any interference therein at the stage. It cannot be said that the AO has altogether lacked the jurisdiction to issue the impugned notice. Much emphasis has been led before the learned single Judge on the point that sanction for issuing the notice u/s 148 of the Act, 1961, to the

appellant has been granted by the officer who was not competent to do so. That aspect has been considered and we do not find any error in the approach of the learned single Judge. It is not in dispute that the Addl. CIT is the superior officer in the hierarchy than the Jt. CIT, in the Department. Certainly, the superior officer in hierarchy is competent to issue sanction for issuance of the notices to the assessee u/s 148 of the Act, 1961.

14. That apart, the grounds on which the appellant sought to challenge the validity, propriety and correctness of the notices issued to it u/s 148 of the Act, 1961 by the Department are not such which may justify any interference of this Court under Article 226 of the Constitution of India. The jurisdiction under Article 226 of the Constitution of India, which is extra-ordinary equitable one, is permissible to be exercised against show-cause notice under exceptional circumstances and not as a matter of rule or right. The grounds raised to challenge the validity of this show-cause notice are available to place for consideration by the appellant before the AO and thereafter in case the decision goes against it thereon, ample statutory right of appeals is available to it.

15. We are concerned in this matter with the entertainment of the writ petitions against show-cause notice issued by a statutory authority. It is not gainsay that the authority who issued the same was competent one. The appellant has not questioned the vires of the statutory provisions governing the matter. There is also no question of infringement of any fundamental right guaranteed by the Constitution, alleged or proved. We are satisfied that on the findings recorded by the learned single Judge, it cannot be said that the notice was ex facie a nullity or totally without jurisdiction in the traditional sense of that expression i.e., even the commencement or initiation of the proceedings on the face of it and without anything more is totally unauthorised.

16. Their Lordships of the Hon'ble Supreme Court in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, held that in such cases, for entertaining a writ petition under Article 226 of the Constitution of India, against a show-cause notice, at that stage, it should be shown that the authority had no power or jurisdiction, to enter upon the enquiry in question. That too appellant has failed to establish before the learned single Judge and also before us.

17. It is appropriate in the matter that the appellant should avail of alternative remedy and show-cause against the same before the authority concerned and that has been done. It is also open to the appellant to take up the objection regarding jurisdiction in the reply to show-cause. It is not gainsay and stated at the cost of repetition, in the event of any adverse decision, it will be certainly open to the appellant to assail the same in the appeals.

18. Leaving that apart, it is the case where the alternative remedy of filing of the objections against show-cause notice available to the appellant has been availed of. The appellant, as said earlier, has filed the reply/objection to the show-cause

notice. The writ petitions, thus, otherwise also, not maintainable in view of these facts and if any reference is required, the same may have to the decision of the Hon"ble apex Court in Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. and Others,

19. As a result of the aforesaid discussion, all these special appeals fail and the same are dismissed with no order as to costs.

20. Since the special appeals have been dismissed, the stay applications filed therewith do not survive and the same are also dismissed.