(1960) 12 KL CK 0003

In the High Court Of Kerala

Case No : O. P. No. 1428 of 1959

Veeriah Reddiar APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 20-12-1960

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1961) KLJ 281

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : P. Govindan Nair, P.K. Kurien, G. Balagangadharan Nair and K. Sukumaran, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

C.V. Vaidialingam, J.—In this application under Article 226 of the Constitution, Mr. Kurien, Learned Counsel appearing for the petitioner, challenges a notice issued by the respondent namely, Ext. D dated 19-11-1959. It purports to be a notice issued under section. 37 of the income tax Act and it states that the party''s attendance is required in the matter of assessment of his income and he is required personally to attend the office of the respondent on 23rd November 1959 at the time mentioned therein to give evidence or to produce either personally or through representative the documents mentioned in the list of documents directed to be produced. Ext. D further refers to "all books of account (original) to Bank Pass Books etc., relating your Bombay branch for the year 1127". Mr. Kurien contends that for the assessment year 1953-54 which corresponds to the accounting year 1127, assessment had already been completed and, therefore, this notice, Ext. D, without in any way indicating as to the purpose for which such a demand is being made is illegal and without jurisdiction. In any event, Mr. Kurien contended that section 37 of the Act does not empower the office to issue a notice without at least indicating prima facie the reason or the purpose for which the account books etc. are directed to be produced for the year 1127, especially when the assessment for that particular year has already been completed.

2. Originally there was a notice, Ext. B issued on 13-10-1959 asking the party to produce the books of account relating to the Bombay branch for 1127 M. E. The petitioner sent an explanation under Ext. C on 15-10-1959. Under Ext. C the party while acknowledging the letter, Ext. B, stated that there was no provision under the Act to call for the production of the account books for 1127 in the manner in which it has been done. The party further requested the officer not to compel him to act beyond the provisions of the Act. The letter finally winds up with a request to the officer not to insist on the production of the books. In consequence of this reply evidently the officer for the first time issued a regular notice u/s 37 of the Act on 19-11-1959, i.e. Ext. D, which I have already adverted to and it is the one that is sought to be quashed in these proceedings.

3. On 23-11-1959 there was again a reply, Ext. E, sent by the party to the notice Ext. D. He takes up more or less the same attitude as in Ext. B that the assessment for the particular period is over and further takes up the stand that section 37 will not enable such a notice being issued by the officer.

4. He further requests for time being granted if the officer does not accept his contention so that the petitioner may take steps to have the order cancelled or vacated.

5. As I mentioned earlier, this notice is challenged on the ground that the income tax Officer has no jurisdiction to issue such a comprehensive notice as Ext. D u/s 37 of the Indian income tax Act and in any event the notice so issued is bad inasmuch as it does not in any manner specify the purpose for which the said notice has been issued.

6. Mr. G. Rama Iyer, Learned Counsel, appearing for the Revenue has pointed out a slight verbal alteration made in section 37 as it originally stood prior to its amendment by the Finance Act, 1956, and Contended that the section as it now stands is larger wider in scope and therefore the income tax Officer Was well within his jurisdiction in having issued the present notice.

7. In this connection it is necessary to note the exact alteration made in section 37 as it originally stood prior to its amendment by the Finance Act, 1956, and the section as it now stands. Section 37 of the income tax Act as it originally stood ran as follows:

The income tax Officer, Appellate Assistant Commissioner, commissioner and Appellate Tribunal shall for the purpose of this Chapter have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit in respect of the following matters, namely

I am leaving out the other parts of this section as they are not material for the present purpose.

8. The section as it stood prior to 1st April 1956, as I mentioned earlier, has been substituted by the new section 37, the relevant portion of which is as follows:

37 (1). The income tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall for the purpose of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) trying a suit in respect of the following matters, namely,

Here also I am not adverting to the various provisions made u/s 37.

9. The point to be noted is that while the section, as it stood prior to 1956 stated "for the purpose of this chapter", namely, Chapter IV comprising sections 18 to 39, dealing with deductions and assessment, the present section gave powers to the officers mentioned "for the purpose of this Act". Therefore, Mr. G. Rama Iyer contended that the scope of the section as it stands is wider than the previous section which limited the exercise of that power only for the purposes of Chapter IV relating to deduction and assessment

10. I can accept Mr. Rama Iyer''s contention, subject to certain limitations. The fact that the section, as it originally stood gave these powers for being exercised only for the purposes of Chapter IV dealing with the deduction and assessment and by the present amendment the section gives power to the various officers to exercise those powers for the purposes of this Act may prima facie indicate that the legislature did intend to give wider powers to the officers mentioned therein.

11. In this connection, I may also refer to section 22(4) of the Act which gives power to an officer to call for books of account in connection with an assessment pending before him. That also in a way, in my opinion, will support the contention of Mr. Rama Iyer that section 37 really contemplates other cases apart from matters actually pending assessment before him.

12. But in my opinion, the contention of Mr. Kurien that there must be some indication in the notice issued u/s 37 as to the purpose for which it was so issued appeals to me. Section 34 which gives jurisdiction in respect of escaped assessments itself, it will be seen, places certain limitations on the powers of the authorities. Therefore, it cannot certainly be intended that section 37 will straightaway enable the officers mentioned therein to exercise those powers without having any regard to the purposes of the Act. As I mentioned earlier, though the object of the amendment may be to give wider powers for the officers mentioned therein in respect of the various other matters mentioned in the Act, nevertheless when action is taken on the basis of section 37, in my opinion, there must be something on the face of the notice or communication itself to indicate the purpose for which the said notice has been issued by the authorities concerned so that a party may know it. Unfortunately, except justifying the action taken u/s 37, there is no indication in the counter-affidavit filed on behalf of the Revenue in this Court to show what exactly was the purpose of issuing the notice u/s 37. Therefore, on this short ground the notice Ext. D dated 19-11-1959 will stand cancelled and quashed. It is open to the Revenue to take any other proceedings that they may deem competent to take after issuing a proper notice u/s 37 in the light of the observations contained in this judgment.

There will be no order as to costs.

