
(1994) 07 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3270 to 3273 of 1994

V.K. Construction Works Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 154

Citation : (1994) 07 P&H CK 0045

Hon'ble Judges : H.K. Sandhu, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; R.P. Sawhney, for the Respondent

Judgement

G.S. Singhvi, J.—By this order, we are disposing of Civil Writ Petitions Nos. 3270 of 1994, 3271 of 1994, 3272 of 1994 and 3273 of 1994. The first two petitions have been filed by V.K. Construction Works Limited and the other two petitions have been filed by Monark Engineers Pvt. Ltd. The grievance of the petitioners in all these petitions is against the notice issued by the respondent to them u/s 154 of the Income Tax Act, 1961, for the assessment years 1989-90 and 1990-91. The petitioners are engaged in the business of construction of buildings and are assesseees under the Income Tax Act. For the years 1989-90 and 1990-91, the petitioners filed their returns and claimed deductions u/s 32A as well as Section 80I of the Income Tax Act. The Assessing Officer, namely, the Assistant Commissioner of Income Tax, Central Circle, Chandigarh, finalised the assessment of the petitioners for the years 1989-90 and 1990-91 u/s 143(3) of the Act. The petitioners filed separate appeals against the orders of assessment passed by the Assistant Commissioner. These appeals came to be allowed by the Commissioner of Income Tax (Appeals). The appellate authority accepted the claim of the petitioners for deductions under Sections 32A and 80I. The appellate authority directed the Assessing Officer to allow the claim of the assesseees after calculating the deductions as per rules.

2. Aggrieved by the orders of the Commissioner of Income Tax (Appeals), the Department has filed second appeals before the Income Tax Appellate Tribunal which are said to be still pending adjudication. In the meanwhile, the Commissioner of Income Tax (Appeals) issued the impugned notices on February 3, 1994, calling upon the petitioners to show cause as to why the so-called mistake of law in the orders passed by it on the appeals of the assessee allowing deductions under Sections 32A and 80I be not rectified.

3. The petitioners have assailed these notices on the ground that the mere rendering of judgment by the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, cannot be treated as an error of law apparent on the face of the order which could authorise the respondent to invoke Section 154 of the Act. The petitioners' assertion is that the condition precedent prescribed in Section 154 for issue of a notice to the petitioners has not been fulfilled and, therefore, the action of the respondents is liable to be declared void. The respondent has in its reply pleaded that when the order passed by the Commissioner of Income Tax (Appeals) was founded on the judgment in Commissioner of Income Tax Vs. N.C. Budharaja and Company, and that judgment has been reversed, the appellate order has been rendered void and there is no justification for the petitioners to seek intervention of the court at the stage of notice. The respondent has pleaded that the petitioners can file a reply to the show-cause notice and convince the appellate authority that the provisions of Section 154 are not attracted in their case and if at all a decision given by the Commissioner of Income Tax (Appeals) is adverse to the petitioners, they can avail of the remedy available to them under the provisions of the Act.

4. Learned counsel for the petitioners vehemently argued that there is every reason for the petitioners to seek the intervention of the court even without filing a reply to the show-cause notice because the very act of the Commissioner of Income Tax (Appeals) of issuing notices is void and the petitioners are not bound to wait for a decision by the Commissioner of Income Tax (Appeals). He has submitted that a party can always approach the court under Article 226 without exhausting the remedies available to it under the statute and once the court is satisfied that the order under challenge is without jurisdiction, the court is bound to interfere. He had relied on the decisions of the various High Courts in support of his submissions. In particular, he made reference to Jiyajeerao Cotton Mills Ltd. Vs. Income Tax Officer, "C" Ward and Others, ; V.R. Sonti Vs. Commissioner of Income Tax, ; Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, ; Income Tax Officer, "G" Ward and Another Vs. India Foils Ltd., and Commissioner of Income Tax Vs. T.N. Viswanatha Reddy, . Learned counsel for the Department has argued that the writ petitions are liable to be dismissed as misconceived and premature because only a notice has been issued to the petitioners and they have an opportunity to submit a reply and convince the competent authority that the notice u/s 154 is not warranted. Learned counsel argued that the act of the petitioners in rushing to the court even without filing a

reply to the show-cause notice must not be encouraged by the court by exercising its jurisdiction under Article 226.

5. We have given our thoughtful consideration to the rival contentions and are of the opinion that the writ petitions deserve to be dismissed.

6. It is admitted by both the sides that no order adversely affecting the rights of the petitioners has been issued by any competent authority. The only thing which has happened is that notices u/s 154 of the Act have been issued to the petitioners calling upon them to submit reply as to why the deductions allowed to them by the earlier orders of the Commissioner of Income Tax (Appeals) be not disallowed. In the show-cause notices, the respondent has described its earlier orders as suffering from a mistake of law. While issuing the show-cause notices, the authority can at best be said to have formed a tentative opinion about the existence of an error apparent on the face of the order or a patent mistake therein. It is not possible to accept the argument of learned counsel for the petitioners that the authority which has issued the show-cause notice has acted with a closed mind or that it will not consider the replies which the petitioners may submit in response to the show-cause notices. It is also not the argument of learned counsel for the petitioners that the competent authority does not have the jurisdiction to drop the proceedings initiated in pursuance of the show-cause notices. To us, it is clear that the competent authority which has issued notice to the petitioners has full power to take a decision that it is not legally justified to proceed with the show-cause notice. It is always open to the competent authority to accept the plea of the petitioners that the conditions specified in Section 154 of the Act for issue of a notice have not been satisfied and, therefore, the proceedings should be dropped. Whether the competent authority will feel persuaded to hold in favour of the petitioners or not is not something on which we should comment at this stage. Suffice it to say that the petitioners have a remedy available to them by filing a reply before the competent authority and making a submission that the notice be dropped or the proceedings in pursuance of the notices be held in abeyance till the second appeals filed by the Department are heard and decided by the Tribunal. That apart, if an order adversely affecting the rights of the petitioners is passed or even their objections are overruled, they have remedy available to them under the Act. In view of the availability of more than one remedy to the petitioners, which, in our opinion, cannot be termed as less effective, the extraordinary haste shown by the petitioners in approaching this court cannot be appreciated.

7. The apex court as well as this court and other High Courts time had again emphasised the need for restraint on the part of the High Courts in interfering in such matters even before the passing of final orders. In *Commissioner of Income Tax Vs. Premchand Jain* (Legal representative of late Pannalal Jain), , this court (sic) has examined an almost similar question and has held that issue of a notice at this stage of the proceedings is unwarranted. Similarly, in *Eicher Good-Earth Ltd. v. State of Haryana* [1994] 2 PLR 529, a Division Bench of this court has

made reference to the decisions of the Supreme Court in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , and held that jurisdiction under Article 226 should not be exercised when several remedies are available to the aggrieved party. We do not find any justification to make a departure from the views expressed by this court in the abovereferred cases.

8. For the reasons aforesaid, the writ petitions are dismissed. No costs.