(1954) 02 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No''s. 52 and 54 of 1953

Western India Match Co. Ltd., Bombay APPELLANT

Vs

Municipal Council Alleppey and another RESPONDENT

Date of Decision : 05-02-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 Ker 85

Hon'ble Judges : Subramonia Iyer, J

Bench : Single Bench

Advocate : N. Varadaraja Iyengar, for the Appellant; P. Govindan Nair, G.B. Pai and K.V.R. Shenoy, for the Respondent

Final Decision : Dismissed

Judgement

Subramonia Iyer, J.—The Western India Match Co., Ltd., who have their registered office in Bombay and who do their business of manufacture and sale of matches all over India including the town of Alleppey in this State, are the petitioners and the respondents are the Municipal Council, Alleppey and the Commissioner, Alleppey Municipality, respectively in both the petitions. The prayer in both is for the issue of a writ of certiorari calling up the relevant records from the respondents and quash the order of the second respondent (1) dated 16-4-1951 assessing the petitioner to profession tax and the first respondent''s order dated 24-3-1952 in appeal therefrom in O.P. No. 52 and (2) dated 12-5-50 assessing the petitioner to profession tax and the first respondent''s order dated 24-3-1952 in appeal therefrom in O.P. No. 54, and to give further directions in the matter of refund of tax illegally levied or to issue such other writs or orders as would be deemed necessary in the circumstances of the case.

The point that is raised in both the cases is the same and is as regards the propriety of the assessment of the petitioner to profession tax by the Alleppey Municipality. O.P. No. 54 relates to assessment for the two half sears of the year

1125 and O.P. No. 52 relates to that for 7 1/2 months, a half-year and 1 1/2 months in the year 1126, the broken period of 1 1/2 months having been dealt with for the change of the year of assessment from the Malayalam era to that under the Gregorian Calendar which is followed in India after the Constitution. The law that applies is the District Municipalities Act, Travancore Act 33/1116 and the question raised is what is the specific provision thereof that applies to the petitioner. Section 133 of the Act enacts that the rules and tables embodied in Sch. 2 shall be read as part of this Chapter, that is, Chapter VI headed Taxation and Finance. Schedule II is entitled Taxation and Finance Rules. Rule 19 provides for the issue of

a notice demanding a return in the prescribed form showing the income accruing to such company or person on the basis of which it or he is liable to be assessed for profession tax for the half year in question

if in the opinion of the executive authority professional tax is due from any company or person.

Pursuant to the notice issued to the petitioner returns were submitted showing the turnover at Alleppey for the concerned periods. The profits and loss accounts of the company covering the said periods were afterwards produced through their local counsel for verification. The income that is returned was on the basis of the net profits as entered in the balance sheets, calculating the proportion that the turnover at Alleppey bore to the total Indian turnover. The assessments that were made were also based on the balance sheets and profit and loss accounts submitted by the petitioner. The net profits were, however, taken to be not the figure shown as such in the said documents but by adding back a reserve made for taxation in O.P. No. 52, and two items (1) transfer to general reserve fixed and (2) reserve for taxation in O.P. No. 54, as these were not really items of expenditure to be deducted for arriving at net profit but were merely deductions made from the net profits for tentatively arriving at a figure called net profits for purposes of dividend.

This adding back necessarily resulted in a larger proportionate income whereon the aforesaid orders of the second respondent were made. The petitioner company presented appeals before the first respondent Municipal Council and the only point of attack was that the adding back was unjustified and that the amount of income as shown in their returns should have been accepted. Their contention was obviously unsustainable as a reserve made out of profits, whether for taxation or otherwise, will still be profits and the appeals were dismissed by the aforesaid orders which were impugned.

2. The point taken in the petitions to this Court is primarily that having accepted the turnover basis for purposes of computation of the income the Commissioner had no jurisdiction to arbitrarily exaggerate the all India profit and ascertain on such basis the proportionate income from the Alleppey Sales Depot (paragraph 11 of the affidavit). Alternatively, it is claimed in para 13 that if the income as

returned was unacceptable the Commissioner had only to ascertain the income of the Alleppey Depot on the basis of 6 per cent of the turnover as prescribed by Government Notification R. Dis. 705/47, L.G.A. dated 26-8-1947 as per R. 18 of Sch. II of the Act in that regard. Clause 2 of R. 18 enacts that

Where a company or person transacts business partly in the area of a Municipality and partly outside such area, the income of such company or person from the transaction of business in the area of the Municipality shall, for the purpose of levying profession-tax under this Act, be deemed to be the percentage prescribed under cl. (b) of sub-r. (1) of the turnover of the business transacted in such area during the half-year or the corresponding half-year of the previous year, as the case may be.

A proviso to this clause was added on 26-8-1947. Though the second clause of the 18th rule was not relied upon by the petitioner either before the Commissioner or before the Council the note made in the relative file of the Council (Profession Tax Appeals Nos. 22/52 and 10/50/1/26 respectively) shows that

the assessment was made under amendment to proviso of R. 16(2) (sic) relying on the balance sheet and letter of the company dated 14-2-1950. Inadmissible items in the balance sheet were included in the assessment.

The tax levied had been collected before the appeals were filed. The original petitions were presented in this Court on 30-3-1953, i.e., over a year after the impugned appellate orders. The respondents filed counter-affidavits in both the cases.

3. The only point urged by Mr. Varadaraja Iyengar on behalf of the petitioner is that the only legal mode of ascertaining the income for assessment of profession tax is provided by R. 18(2) and that is by taking from the total income the percentage fixed by the Government and that the actual profit made is irrelevant. The difference between the assessment actually made as it should have been made, according to the petitioner, is only round about a couple of hundred rupees. The petitioner did not rely upon the provision which, according to their learned counsel, really applies, before the authorities that made the assessment in the first instance or in appeal. The appellate authority is seen, however to have been alive to that provision and nevertheless affirmed the assessment relying upon the proviso to R. 18(2) which in their view led to the same result. It may be that they were wrong in their calculation or in their interpretation of the provision. The question is whether interference by this Court by a writ of ''certiorari'' under Art. 226 would be justified. The scope of interference is defined by the Supreme Court thus:

Such write as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission or error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made. - (Veerappa Pillai Vs. Raman and Raman Ltd. and Others,)

Applying this principle to the facts and circumstances of this case, I consider that no interference by this Court is called for or can be justified. Both the Original Petitions are, therefore, dismissed with costs of the respondents, Advocate''s fee Rs. 100/- in each case.

