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Court : Mumbai

Decided On : Oct-24-2001

Reported in : 2002(2)ALLMR168; [2002]257ITR689(Bom)

Judge : J.G. Chitre and ;J.P. Devadhar, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 143, 143(1) and 143(2); [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 692 of 2001

Appellant : Simplex Enterprises and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : R.V. Desai, Adv. for Respondent No. 1 and ;R.M. Sawant, Govt. Pleader for Respondent Nos. 2 and 3

Advocate for Pet/Ap. : P.B. Andhyarujina, Adv., i/b., Arun H. Mehta, Adv.

Disposition : Petition dismissed

Judgement :

1. Heard. Shri Mehta by pointing out a letter written to the Sales Tax Officer, Enforcement Branch, Mazgaon, Bombay, dated October 10, 1997, submitted that the petitioners repeatedly sought for the production of the documents seized by the Sales Tax Department in the raid but his request was not granted. He further

submitted that though such request was made to the Assessing Officer, he did not pay any heed to it and proceeded further with disposing of the claim of the Revenue against the petitioners. He submitted further that the revisional authority also did not look into this genuine grievance of the petitioners and proceeded further in passing order rejecting the revision petition filed by the petitioners. Shri Mehta submitted that thus the order passed by the Assessing Officer and the revisional authority are orders passed against the petitioners without hearing them and, therefore, those orders are 'ex parte' orders. He submitted that, the order passed by the revisional authority needs to be set aside, so also the order which has been passed by the Assessing Officer and the Assessing Officer needs to be directed to reassess the case of the petitioners again after providing them sufficient opportunity of producing the record of the Silvassa branch which has been seized by the Sales Tax Department and an appropriate writ be granted in favour of the petitioners by admitting this petition for final hearing.

2. Shri Desai submitted that so far as the Income-tax Department is concerned, the order of the Assessing Officer shows that on a number of occasions the hearing was adjourned and sufficient opportunity was given to the petitioners to produce the documents pertaining to the Silvassa branch in the context of the points raised by them denying the claim of the Revenue about the payment of tax from them. He submitted that the word 'ex parte', which has been used by counsel for the petitioners is used in respect of the order which has been passed without giving notice. But in this case that is not so. The petitioners were given a notice. Not only that, they participated in the hearing, sought adjournments on various occasions and adjournments were granted. But even then, they did not produce any document pertaining to the seizure by the Sales Tax Department. He pointed out that maximum efforts were made for the purpose of getting the said record produced from the Sales Tax Department. Leaving aside this aspect, Shri Desai submitted that sufficient opportunity was given to the petitioners to obtain the appropriate copies of the documents on which they were placing reliance before the income-tax authorities. But nothing was done. Therefore, according to Shri Desai, the grievance which has been put forth in this petition by the petitioners is nothing but an afterthought excuse.

3. Shri Sawant submitted that the Sales Tax Department granted all opportunities to the petitioners to get the authenticated copies of all the documents on which they were placing reliance, which were pertaining to the Silvassa branch. But the petitioners did not avail of all these opportunities. Shri Sawant submitted that the Sales Tax Department is not a subordinate department to the Income-tax Department and, therefore, it should have produced all the record. A wish was expressed by the petitioners to get the record of said seizure before the concerned Income-tax Department. He submitted that there is absolutely no substance in the case of the petitioners.

4. Both Shri Desai and Shri Sawant submitted that this petition be not admitted and should be dismissed.

5. After careful scrutiny of the order passed by the Assessing Officer which has been depicted by annexure exhibit C and the order passed by the provisional authority depicted by annexure exhibit D it is obviously clear that all the opportunities were granted to the petitioners to produce the documents in respect of the Silvassa branch. But the petitioners did nothing but kept on dozing. It is pertinent to note that paragraph No. 1 of the order passed by the Assessing Officer, which is annexure exhibit C, shows that the case of the petitioners was selected for scrutiny in view of the provisions of Section 143(l)(a) of the Income-tax Act, 1961. A notice was also issued to the petitioners in view of the provisions of Section 143(2) of the Income-tax Act by the Assistant Commissioner of Income-tax, Central Circle 30, Mumbai. When the case was taken up for hearing, a fresh notice under Section 143(2) was issued on June 25, 1997, fixing the appointment on September 8, 1997. Neither anybody attended nor there was any communication requesting the Assessing Officer for adjourning the hearing. Again, a notice under Section 143(2) was issued fixing the appointment on October 3, 1997. There was no compliance. At the request of the assessee the case was adjourned to November 4, 1997. On November 4, 1997, neither anybody attended nor any details were furnished to the Assessing Officer. Thereafter, the assessee's representative Shri Bipin Shah, attended the office of the Assessing Officer and stated that the books of the firm were seized by the Sales Tax Department and the assessee was trying to get copies of the said books, so that the required details

can be furnished. As nothing was heard, a final notice was issued to the assessee requesting him to attend the office on January 21, 1998 at 2.30 p.m. No compliance was made. However, a letter dated January 27, 1998, was filed in the office of the Assessing Officer informing that the books of the firm were seized by the Sales Tax Department and it was difficult for the assessee to prepare the details as desired by the Assessing Officer's office. The same stand was reiterated.

6. On February 25, 1998, a letter along with summons to a partner, Shri K. K. Mistry, was issued asking him to personally attend the office of the Assessing Officer and furnish the details mentioned in the letter. The assessee was further informed that the present one was a time barring assessment and as such it was to be completed expeditiously. Not only that, he was requested to furnish the details in respect of the assessee's claim under sections 80HHC and 80-IA of the Income-tax Act, 1961. The case was fixed for hearing on March 6, 1998. On that date of appointment no authorised person attended the office but a messenger from the firm brought a letter dated March 6, 1998, and furnished a few details. As regards submission of details of purchase/sales (monthly sale and purchase local and export) and bank summary, the assessee expressed its inability to submit the same because the books of account were seized by the Sales Tax Department. The assessee promised that further details asked for would be submitted within a week's time. On March 16, 1998, the assessee filed a few more details vide letter dated March 26, 1998. No books of account or loan confirmations and details in support of its claim under sections 80HHC and 80-IA were filed.

7. On account of such tactics played by the assessee and as time was running against the limitation, the Assessing Officer expressed that he had no alternative but to pass the order which has been passed by him.

8. Not only this but when the said prayer was made before the revisional authority, the revisional authority also granted opportunity to the petitioners to produce those documents. But they were not produced at that time. Mr. M. Subramanian, advocate for the petitioners, conceded that the reliefs sought by the petitioners/assessee would be appreciated only after production of such record in

the context with the Silvassa branch. The said learned advocate undertook to produce copies of the relevant documents. To enable him to do so, almost four months time was granted by the revisional authority but still nothing was done. The case was once again posted for hearing on November 15, 2000, and notice of hearing was served well in time. The authorised representative, Shri Bipin Mehta, was present on August 20, 1999 and again he filed adjournment petition stating that the adjournment was sought as the person in charge was out of station.

9. The revisional authority also pointed out that in the impugned assessment, several additions and disallowances of substantial magnitude were made and since the assessee failed to substantiate the genuineness of the claims of loans, expenses and rebates, in spite of reasonable opportunity having been granted, the revisional authority had no alternative but to dismiss his revision petition.

10. When a query was made, Shri Mehta submitted that no appeal was filed against the order of the Assessing Officer but the petitioners chose to file the said revision petition.

11. After a careful scrutiny of the order of the Assessing Officer, it is obvious that some stock was transferred to the Silvassa office and expenses in respect of that transfer of stock were not debited to the Silvassa branch account. Some loans were granted to some loanee without charging interest and there was no record produced to show that the said loans were granted from 'no interest loan funds'. Not only that the partners had taken away the emoluments, but the same were not debited to the account of the Silvassa branch. In addition to that, the partners had taken overdraft but that was also not debited to the Silvassa branch account. The labour charges were not shown to have been paid to the Silvassa branch nor were they shown to have been paid to an outside agency. No appropriate debit entry was made in the books of account in respect of expenses of sales promotion. The Assessing Officer has assessed all these things in support of his conclusion which was against the assessee/petitioners. For reasons best known to the petitioners, they did not file an appeal but chose to assail the said order of the Assessing Officer by filing revision.

12. So far as the production of the documents seized by the Sales Tax Department is concerned, it is nothing but a bogey created by the petitioners for the purpose of killing time. On account of delaying tactics played by the petitioners as it has been depicted by helplessness expressed by the Assessing Officer, he was required to pass the order which has been challenged. Shri Sawant has pointed out that for giving fair opportunity to the petitioners, the Ward Inspector of the Sales Tax Department was called by the officer concerned and information was sought about the grievance which was made by the petitioners. All opportunities were given to the petitioners to produce those documents. The petitioners were granted opportunities for obtaining authenticated copies of the said record but they did not do anything and did not produce those documents before the Assessing Officer and now a hue and cry is made about that. The petitioners were having sufficient time to obtain authenticated copies. They could have summoned the concerned person to attend the office with documents to be produced had there been truth in the 'raid theory'. Absence of these things makes an adverse inference irresistible against such litigants and their theory of raid becomes unbelievable.

13. The petitioners have not come to the court with clean hands. It cannot be said that the said orders have been passed treating them ex parte. On the contrary, it will have to be said that the petitioners were playing delaying tactics for avoiding the liability of paying the taxes. When such tactics are played for delaying the hearing and false grounds are attempted to be created for future defence, they need to be deprecated. Thus with disapproval of the behaviour of the petitioners, the petition stands dismissed.

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