

T.M. Mohan and ors. Vs. Additional Agricultural Income-tax Officer

T.M. Mohan and ors. Vs. Additional Agricultural Income-tax Officer

SooperKanoon Citation : sooperkanoon.com/373799

Court : Karnataka

Decided On : Nov-30-1989

Reported in : ILR1990KAR642; [1990]184ITR190(KAR); [1990]184ITR190(Karn); 1990(3)KarLJ203

Judge : K. Shivashankar Bhat and ;S. Rajendra Babu, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 119; Karnataka Agriculture Income Tax Act, 1957 - Sections 17(5)

Appeal No. : Writ Appeal Nos. 342 and 961 to 968 of 1987

Appellant : T.M. Mohan and ors.

Respondent : Additional Agricultural Income-tax Officer

Advocate for Def. : M.R. Achar, Adv.

Advocate for Pet/Ap. : K.A. Hemaraj, Adv.

Judgement :

Shivashankar Bhat, J.

1. Against the orders made in the writ petitions (See [1987] 168 ITR 381 and [1987] 168 ITR 384), these writ appeals are filled by the writ petitioner. The respective petitioner challenge the levy of surcharge levied on the amount of

agricultural income-tax pursuant to the amendment effected to the Karnataka Agricultural Income-tax Act, by the Karnataka Ordinance No. 13 of 1980. Two contentions were raised by the petitioners, viz., (1) that the Ordinance having lapsed on March 11, 1981, could not be invoked and no tax be levied thereunder; (2) the commissioner of Agricultural Income-Tax had issued a circular on September 13, 1985, circular No. 2 of 1985-86, wherein he had clearly stated that in case where assessment were pending, the surcharge shall not be levied under the lapsed Ordinance.

2. The learned single judge, however, did not agree with the contentions. On the first question, the view expressed by the learned single judge may be stated in the words BBHH used in an earlier judgment quoted in the order under appeals, as follows (See [1987] 168 ITR 381, 383) :

'Though the duration of the ordinance is limited to the period laid down in clause 2(a) of article 213 of the constitution, its effect will endure even after the expiry of the Ordinance. In other words, to matter governed by or affected by the ordinance, even if they are consider after the lapse of Ordinance, the Ordinance will have to be applied.

Therefore, when the authority made the assessment for the assessment year 1981-81, it was required to take into consideration the ordinance. The mere fact that the assessment order was passed subsequent to the lapse of the ordinance did not enable the assessee to valid the ability of surcharge imposed by the ordinance for the period of the assessment in question. That being so, the respondent was justified in imposing the surcharge.'

3. On second hand question, the learned single judge observed that the circular being contrary to law had no force of law and, therefore, the authorities were right in levying the surcharge, ignoring the circular.

4. In these writ appeals. Learned counsel for the appellants raised the same contention. Having regard to the view we have taken in respect of the effect of the aforesaid circular issued by the commissioner, it is not necessary for us to express any opinion on the first question.

5. Under the Agricultural Income-Tax Act. The legislature has created a hierarchy of officials and the commissioner has been entrusted with powers of administering the Act. Section 17(5) which is relevant reads :

'All Officers and persons employed in the execution of this Act shall observed and followed the orders, instruction and direction of the state Government and the Commissioner : Provided that no such orders, Direction or instruction shall be given so as to interfere with the discretion of any appellate authority in the exercise of its appellate function.'

6. From the above provision, it is clear that the authorities acting under the Act bound to follow the orders. Instruction and directions issued by the commissioner. The circular issued by the commissioner certainly is either an order or a direction falling within the scope of the above provision. The said provision is similar to section 119 of the Income-Tax Act and the circular issued under the relevant provision of the Income-tax Act were consider by the supreme court is several cases. The earlier decisions were referred in K. P. Varghese v. ITO : [1981]131ITR597(SC) . The supreme court held (at page 612 of 131 ITR) :

'But the construction which is commending itself to us dose not rest merely on the principle of contemporanea expositio. The two circular of the central Board of Direct Taxes to which we have just referred are legally binding on the Revenue and this binding charter attaches to the two circular even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well-settled as result of two decisions of this court, one in Navnit Lal C. Javeri v. K. K. Sen, AAC [1966] 56 ITR 198 and the other in Ellerman Lines Ltd. v. CIT : [1971]82ITR913(SC) . That circulars issued by the Central Board of direct Taxes under section 119 of the Act binding on all officers and person employed in the execution of the Act even if they deviate from the provision of the Act, the question which arose in Navnit Lal C. Javeri's case : [1965]56ITR198(SC) was regard to the constitutional validity of section 2(6A)(e) and 12(1B) which were introduce in the Indian Income-Tax Act, 1922, by the finance Act, 1956, with effect from April 1, 1955. These two section provided that any payment made by a closely held company to its share holder by way of

advance or loan to the extent to which the company possesses accumulated profit shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to the assessment year 1955-56. The constitutional validity of these two section was assailed on the ground that they imposed unreasonable restriction on the fundamental right of the assessee under article 19(1)(f) and (g) of the constitution by taking outstanding loans or advances of the past year as dividend. The revenue, however, relied on a circular issued by the Central Board of revenue under section 5(8) of the Indian Income-Tax Act, 1922, which corresponded to section 119 of the present Act, and this circular provided that if any such outstanding loans or advances of past year were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholder to whom loans or advances were given. This circular was clearly contrary to the plain language of section 2(6a)(e) and section 12(1B), but even so this court held that it was binding on the revenue and since 'past of the section 12(1B), as it was introduce in 1955, were substantially granted exemption from the operation of the said provision by making it clear to all the companies and their shareholder that if the past loans were genuinely refunded to the companies they would not be taken into account under section 12(1B), (p. 203). Section 2(6A)(e) and 12(1B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines's case [1971] 82 ITR 931. Were referring to another circular issued by the Central Board of revenue under section 5(8) of the Indian Income-Tax Act, 1922, on which reliance was placed on behalf of the assessee, this court observed (at page 921) : 'Now. Coming to the question as to effect of instruction issued under section 5(8) of the Act, this court observed in Navnit Lal C. Javeri v. K. K. Sen, AAC : [1965]56ITR198(SC) :

It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under section 5(8) of the Act. This circular pointed out of all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans. And the idea was not to affect such transactions and not to bring them within the mischief of the new provision.'

7. The directions given in that circular clearly deviated from the provisions of the Act, yet this court held that the circular was binding on the Income-tax Officers.

8. The two circulars of the Central Board of direct Taxes referred above must, therefore, be held to be binding on the Revenue in the administration or implementation of the sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer.

9. The Supreme Court referred to the two circulars issued by the Central Board of Direct Taxes and observed that the said two circulars departed or deviated from the construction of sub-section (2) of section 52 involved therein, but held that the circulars issued by the Central Board of Direct Taxes were binding on all officers in the execution of the Act even if they deviate from the provisions of the Act. Therefore, it was held that the two circulars were binding on the Revenue in the administration or implementation of the provisions of the income-tax Act.

10. Applying the same principle to the instant appeals, it has to be held that the circular issued by the Commissioner of Agricultural Income-tax was binding on the subordinate officers and the assessing authorities under the Karnataka Agricultural Income-tax Act were bound to give effect to the said circular issued by the Commissioner.

11. The learned single judge has proceeded on the assumption that the circular was not binding on the authorities since it was contrary to law. With utmost respect, we are not in agreement with this view. The interpretation given to the Ordinance and the effect of its lapsing as understood by the Commissioner and as stated in his circular is a matter relevant to the enforcement of the provisions of the Act. The validity of the view expressed by the Commissioner is not before the court; none has challenged it. It is binding on all subordinate authorities.

12. Therefore. In respect of pending assessments, no surcharge could be levied by the assessing authorities.

13. Therefore, in respect of pending assessments, no surcharge could be levied by the assessing authorities. In view of the above, these writ appeals are entitled to succeed. The impugned orders in the writ petitions, annexures-A, B and C are hereby quashed so far as they relate to the levy of surcharge under the Ordinance aforesaid. The writ petitions are also allowed. Rules made absolute. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com