

i.V.R. Constructions Ltd. Vs. Assistant Commissioner of Income Tax and anr.

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Court : Andhra Pradesh

Decided On : Sep-11-1997

Reported in : 1997(5)ALT828; (1998)150CTR(AP)252; [1998]231ITR519(AP); [1998]97TAXMAN287(AP)

Judge : J. Chelameswar and ;S.S. Mohammed Quadri, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 158BC, 220(6), 246, 253 and 253(1)

Appeal No. : Writ Petn. Nos. 10672, 10681 and 10785 of 1997

Appellant : i.V.R. Constructions Ltd.;e. Sudhir Reddy;shyam Prasad Reddy

Respondent : Assistant Commissioner of Income Tax and anr.;assistant Commissioner of Income Tax and anr.;assistan

Advocate for Def. : J.V. Prasad, Adv.

Advocate for Pet/Ap. : P. Srinivasa Reddy and ;S. Dwarakanath, Adv.

Judgement :

Syed Shah Mohammed Quadri, J.

1. These three writ petitions present the same question of law, therefore, they are heard together and are disposed of by this common order. To appreciate the question raised in this case we refer to the facts in Writ Petn. No. 10672 of 1997 which represents the facts in other cases.

The petitioner challenges the validity of the order passed by the CIT, Andhra Pradesh, Hyderabad, the second respondent, which was communicated by the first respondent, in proceedings in G.I.R. No. 1-2 dt. 6th May, 1997. The petitioners filed these writ petitions praying for a writ of certiorari to call for the records relating to the said order and to quash the same.

2. The petitioner is a public limited company carrying on the business of construction of industrial structures, power plants, spinning mills, earthquake rehabilitation projects, bridges, canals, mass housing, etc. Consequent upon the raid made on the premises of the petitioner and other persons connected with it, block assessment order was passed under s. 158BC of Chapter XIV-B of the IT Act, 1961, on 31st January, 1997. The petitioner assailed the order of assessment before the Tribunal in appeal under s. 253(1)(b) and that appeal is pending. While so, the petitioners approached the first respondent under s. 220(6) of the Act for an interim order granting stay of recovery of the tax pending disposal of the appeal in the Tribunal. The first respondent expressed his inability to deal with the matter and indicated that the power under that provision as well as under the circular of the CBDT dt. 21st August, 1969, has to be exercised by the CIT. Then the petitioner filed an application before the second respondent who passed the impugned order referred to above.

The Asstt CIT, the first respondent, filed a counter-affidavit stating, inter alia, that the first respondent rejected the application of the petitioner for stay of collection of tax, so also the second respondent by the impugned order which was communicated to the petitioner. It is added that as the appeal filed by the petitioner is pending before the Tribunal the petitioner ought to have approached the Tribunal.

3. Sri P. Sreenivasa Reddy, learned counsel for the petitioner, heavily relies upon the circular of the CBDT and submits that the rejection of the application in limine

by the second respondent amounts to non-exercise of the jurisdiction vested in the second respondent. The order is, therefore, liable to be quashed. Sri J.V. Prasad, learned standing counsel for the Revenue, submits that the circular is confined to the exercise of the power by the authorities under s. 220(6) of the Act; where the appeal is not filed under s. 246 of the Act, the circular will not vest any powers in the CIT. Therefore, the writ petition of the petitioner is liable to be dismissed.

4. The short question that arises for consideration is whether the impugned order passed by the second respondent suffers from any error or jurisdiction

The order reads as follows :

'The circular cited above is not relevant, particularly relating to block assessment. The stay petitions in all cases are rejected. The AO will ensure that collection of tax on some undisclosed income added protectively in a case will not be enforced. It is for the assessee to approach the Tribunal for stay, if so advised.'

5. On a plain reading of the order, extracted above, it is clear that the second respondent did not decide the petition on the merits. The application is rejected on two grounds :

(i) Circular is not relevant relating to block assessment; and (ii) Assessee has to approach the Tribunal for his stay.

This takes us to the circular on which reliance is placed by learned counsel for the petitioner. It may be useful to extract the circular here which is in the following terms :

'Instruction No.96/F. No.1/6/60 dt. 21st August, 1969.

Income determined on assessment was substantially higher than returned income. Whether collection of tax in dispute is to be held in abeyance till decision on appeal.

1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that IT assessments were arbitrarily pitched at high figures and that the collection of disputed demand as a result thereof was

also not stayed in spite of the specific provision in the matter in s. 220(6).

2. The then Deputy Prime Minister had observed as under :

Where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there was no lapse on the part of the assessee. 3. The Board desire that the above observations may be brought to the notice of all the ITOs working under you and the powers of recovery in such cases up to the stage of first appeal may be exercised by the IAC/CIT.'

The circular refers to the discussion in the 8th meeting of the Informal Consultative Committee with regard to the orders of assessment passed by the authority and not granting of stay under s. 220(6) of the Act. It noted the observation of the Deputy Prime Minister and embodied the direction issued by the Board to the effect that powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the IAC. There can be no difficulty in understanding the import of the circular. It refers to the orders contemplated under s. 220(6) of the Act which reads as follows :

'(6) Where an assessee has presented an appeal under s. 246, the AO may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired as long as such appeal remains undisposed of.'

A perusal of the above provision makes it evident that it is attracted when an appeal has been filed under s. 246 of the Act and such an appeal is pending; in a situation like this the AO is conferred with the power to treat the assessee as not being in default in respect of the amount in dispute in appeal even if the time for payment of the taxes has expired as long as such appeal remains undisposed of. Such an order may be unconditional or may be subject to certain conditions as the AO may impose. Thus, it is clear that where the appeal is not filed under s. 246 of the Act, the provision of s. 220(6) of the Act cannot be invoked.

An appeal against the order passed under s. 158BC(c) of the Act is provided under s. 253(1)(b) of the Act to the Tribunal. We have already pointed out above that the circular is attracted to a case where s. 220(6) of the Act is invoked and that provision can be invoked when appeal under s. 246 of the Act is pending. In cases where the appeals are filed not under s. 246 but under s. 253 of the Act and are pending before the Tribunal neither the provision of s. 220(6) nor the provision of the above circular will be attracted. In this view of the matter, the observation of the second respondent that the petitioner has to seek relief from the Tribunal cannot be treated as one declining to exercise jurisdiction vested in him under the law. We, therefore, find no illegality in the order of the second respondent.

6. Mr. Sreenivasa Reddy submits that the interim orders granted by this Court may be continued for a period of two weeks during which the petitioners in the above writ petitions will approach the Tribunal to seek appropriate interim relief.

7. Having regard to the facts and circumstances of the case, we consider it just and proper to accede to the request of the learned counsel for the petitioner. Accordingly, we direct that the interim order granted by this Court in WPMP Nos. 12957, 12967 and 13065 of 1997 dt. 13th May, 1997, shall remain in force till 26th September, 1997.

The writ petitions are without merit and are liable to be dismissed.

For the above reasons and subject to the above direction the writ petitions are dismissed. No costs.

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