

Dredging Corporation of India Ltd. Vs. Assistant Commissioner of Income-tax and anr.

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Court : Andhra Pradesh

Decided On : Mar-06-1995

Reported in : [1996]217ITR511(AP)

Judge : A. Somakant Bhate and ;K.M. Agrawal, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 201

Appeal No. : Writ Petition Nos. 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011 and 4012 of 1995

Appellant : Dredging Corporation of India Ltd.

Respondent : Assistant Commissioner of Income-tax and anr.

Advocate for Def. : S.R. Ashok, Adv.

Advocate for Pet/Ap. : A. Veeraswamy, ;K. Sreenivasa Kumar and ;N. Jaya Surya, Advs.

Judgement :

1. Heard learned counsel for the petitioner as also learned standing counsel for the Department. After hearing learned counsel for the parties, these writ petitions are hereby finally disposed of.

2. According to learned counsel for the petitioner, the assessments were made against the petitioner and consequent demand notices were issued without giving it an opportunity of being heard. He referred to the letter dated February 13, 1995, issued by the Assistant Commissioner of Income-tax and submitted that this was only the letter received which could not be said to be a notice which was required to be given under the law before making any assessment.

3. Learned standing counsel for the Department referred to the letter dated November 23, 1994, and submitted that this was the notice given to the assessee before making the impugned assessment. He also relied on the letter dated February 13, 1995, referred to and relied on by learned counsel for the petitioner and submitted that this was also sufficient compliance with the legal requirements of the notice before assessment.

4. On going through the letter dated November 23, 1994, we do find that it is a show-cause notice, but it is not a show-cause notice against the assessment. It is a notice calling upon the assessee to show cause why prosecution proceedings should not be launched against it. So far as the second letter dated February 13, 1995, is concerned, it would show that the petitioner claimed exemptions against the permissible deductions, some of which are paid to its employees towards 'uniform making, uniform washing and academic and research allowances'. These could not be claimed as permissible deductions. Learned standing counsel for the Department may be right in what he submits. But, here the question is, without holding so, whether an opportunity of being heard was given to the assessee or not. We find, on going through the letter dated

February 13, 1995, that the exemptions on various accounts of allowances were rejected without affording an opportunity of being heard to the assessee. In the last, an offer was made that, if the assessee is agreeable to pay voluntarily the taxes payable as discussed in the estimate, no penalty or prosecution would be initiated against it. It was otherwise informed that, if the suggestion was not agreeable, default, if any, would render the D. D. O. and the managing director of the company personally liable for prosecution. The assessee was called upon to submit its reply by a certain date. That reply should be construed to be a reply in reference to the offer made. Accordingly, we are of the view that the second letter dated February 13, 1995, can also be not treated to be a notice giving reasonable opportunity of being heard to the assessee before making assessment.

5. In the facts and circumstances of the case, learned standing counsel for the Department suggested that the assessment orders made by the Department against the assessee may be construed as 'show-cause notices' against the assessee and the assessee may be called upon or directed to submit its reply to the said notices within a time to be fixed by this court. We find this offer to be just and reasonable and accordingly accept the same. Learned counsel for the petitioner also agreed to the aforesaid proposal or suggestion made by learned standing counsel for the Department, but so far as the time to be fixed by this court for submission of the reply by the assessee is concerned, there was a little difference. Accordingly, learned counsel for the petitioner submitted that at least one month's time should be given to file reply to the said notices, but learned standing counsel for the Department initially insisted on giving only seven days' time and later on submitted that in any case it should not exceed a period of two weeks.

6. Taking into account the facts and circumstances of the case, we are of the view that it would meet the ends of justice if the petitioner is granted three (3) weeks' time from today to file its reply to the various show-cause notices. It would not be entitled to any extension of time in this regard on any ground whatsoever.

Accordingly, these writ petitions are disposed of by directing that :

(i) The petitioner shall treat the orders passed under section 201 of the Income-tax Act as show-cause notices against the assessee and file its reply within a period of three weeks from today, namely, on or before the 28th day of March, 1995. The petitioner shall be entitled to no extension of time in this regard on any ground whatsoever;

(ii) All demands or recovery proceedings pursuant to the aforesaid orders under section 201 of the Income-tax Act, shall stand cancelled;

(iii) However, after fresh orders under section 201 of the Act, after giving an opportunity of being heard to the petitioner, the Department will be at liberty to take out appropriate steps in accordance with law for realisation of the amount, if any, directed to be paid by it under fresh orders under section 201 of the Income-tax Act.

7. The writ petitions are disposed of accordingly. No order as to costs.

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