

Thanthi Trust Vs. Commissioner of Income-tax (Central), Madras

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Court : Chennai

Decided On : Aug-26-1980

Reported in : [1983]141ITR101(Mad)

Judge : M.M. Ismail, C.J. and ;N.A. Sathar Sayeed, J.

Acts : [Income Tax Act, 1961](#) - Sections 11, 220(6) and 256; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Tax Civil Miscellaneous Petition No. 463 of 1980 in Tax Case No. 1240 of 1979

Appellant : Thanthi Trust

Respondent : Commissioner of Income-tax (Central), Madras

Advocate for Def. : G. Vasantha Pai, Adv.

Advocate for Pet/Ap. : A.N. Rangaswami, Adv.

Judgement :

M.M. Ismail, C.J.

1. This is an application for stay of collection of income-tax pending the reference in T.C. No. 1240 of 1979, relating to the assessment year 1968-69.

2. The learned counsel for the petitioner contended that from 1962 to 1967, the petitioner had been crediting the account of the educational institution with the amounts in question, that the I.T. Dept. did not raise any objection whatever, that suddenly with reference to the assessment year 1968-69, a new ITO changed in view and took the stand that the mere crediting of the account was not enough, that the amounts should have been actually paid in order to attract the exemption under s. 11 of the I.T. Act, and that, otherwise the petitioner was liable to pay the tax, and that, accordingly, the petitioner, had been subjected to tax. According to the learned counsel for the petitioner, the said action of the ITO is the subject-matter of a few writ petitions pending of the file of this court, as well as of the reference in question. It is pending the reference under s. 256 of the I.T. Act, 1961, that the petitioner prays for the stay of collection of Rs. 5,64,056.

3. The learned counsel for the Department, Thiru A. N. Rangaswami, raised a preliminary objection that this court has no jurisdiction to grant stay of the collection of the tax pending a reference under s. 256 of the I.T. Act, and in support of this contention he relied on an unreported judgment of the Calcutta High Court in *Dwarka Prasad Bajaj v. CIT* (since reported in : [1980]126ITR219(Cal)).

4. As against this, Thiru G. Vasantha Pai, learned counsel for the petitioner, brought to our attention a decision of the Andhra Pradesh High Court in *Poliseti Narayana Rao v. CIT* : [1956]29ITR222(AP) , and a decision of the Delhi High Court in *L. Bansi Dhar & Sons v. CIT* [1977] 111 ITR 330, which followed the decision of the Andhra Pradesh High Court referred to above. The learned counsel also drew our attention to a decision of the Supreme Court in *ITO v. M. K. Mohammed Kunhi* [1969] 71 ITR 815, which the Supreme Court has referred to the decision of the Andhra Pradesh Court referred to already without any disapproval.

5. The decision of the Andhra Pradesh High Court in *Poliseti Narayana Rao v. CIT* : [1956]29ITR222(AP) , is definite and clear and that court holds that in a proper case the High Court has power under s. 151 of the CPC and under art. 227 of the Constitution to issue an order staying the collection of the tax pending a

reference under s. 66 of the Indian I.T. Act, 1922. That decisions was followed as we have already pointed out by the Delhi High Court in L. Bansi Dhar and Sons v. CIT [1977] 111 ITR 330, referred to already.

6. In ITO v. M. K. Mohammed Kunhi [1969] 71 ITR 815, the Supreme Court had to consider the power of the Appellate Tribunal to grant stay of the collection of tax. The Supreme Court, after referring to s. 254 of the I.T. Act, 1961, held that the statutory power under s. 254 of the I.T. Act, 1961, carried with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal, if successful, from being rendered nugatory. In the course of the judgment, the Supreme Court observed (p 821) :

'It is interesting that in another case, Polisetti Narayana Rao v. CIT : [1956]29ITR222(AP) , the same High Court held that stay could be granted by it pending reference of a case by the Appellate Tribunal to the High Court. This power the High Court had under section 151 of the Civil Procedure Code and under articles 227 of the Constitution.'

7. From the above passage, it is clear that the Supreme Court not only did not disapprove of the decision of the Andhra Pradesh High Court referred to already, but might be taken to have approved of the decision of the Andhra Pradesh High Court. The learned counsel for the Department contended that the question before the Supreme Court was different, namely, whether the Appellate Tribunal had power to grant stay of collection of tax or not and on that question the decision of the Andhra Pradesh High Court has referred to above had no bearing. Still so long as the Supreme Court has referred to the judgment of the Andhra Pradesh High Court and also referred to the rationale behind the conclusion reached by that court, without expression any disapproval, we must proceed on the basis that the Supreme Court had approved of the reasoning being the decision of the Andhra Pradesh High Court in the case referred to above. In view of this, we cannot hold that the unreported decision of the Calcutta High Court can be acted upon.

8. Having come to the conclusion that this court has jurisdiction in proper cases to grant stay of collection of tax pending reference under s. 256 of the I.T. Act, 1961, the question that arises for consideration is whether we should exercise this power

in this particular case or not. Normally speaking, having regard to the nature of the jurisdiction which the court exercises under s. 256 of the I.T. Act, 1961, namely, purely advisory, this power can be exercised, if at all, only in exceptional cases where extraordinary circumstances are present and not merely as a matter of routine, as if this court were a court of appeal sitting in judgment over the assessments made by the officers functioning under the Act. Consequently, the question boils down to one of finding out whether there is any extraordinary circumstance present in this case or not.

9. As we have pointed out already, according to the learned counsel for the petitioner, and the same was not disputed by the learned counsel for the Department, from 1962 to 1967, the petitioner has been following a particular method of crediting the educational institution with the amounts in question and the same was approved of by the Department and, on that basis assessments were made ; and for the first time with regard to the assessment year 1968-69, a new ITO who came on the scene, changed his opinion and took the stand that the mere crediting of the amounts in the account of the educational institution was not sufficient and that the amounts should have been actually spent on the educational institution itself. In view of this peculiar circumstances present in the case, we consider that this is a proper case in which we should exercise our power in that behalf.

10. The only other question is, what should be the order we should pass. The learned counsel for the petitioner with great vehemence and eloquence contended that in view of the attitude of the Department itself, the petitioner had allowed the educational institution to withdraw several lakhs of rupees and consequently all these amounts had already been paid and that it would be unjust on the part of the Department to call upon the petitioner to pay the tax which itself and also requested us to grant an unconditional order to stay and, if not, to direct the Department to accept the security of immovable properties for the tax involved.

11. Having given our careful consideration to the arguments as well as to the entire circumstances, we are of the opinion that the proper order to pass in the present case will be to call upon the petitioner herein to pay one-half of the tax,

namely, one-half of Rs. 5,64,056 payable for the assessment year 1968-69, as per the orders of assessment within a period of three months from this dated and to give an opportunity to the petitioner to give a bank guarantee for the other half of the amount within the same period. Subject to the above conditions being fulfilled, there will be an order of stay for collection of the Tax of Rs. 5,64,056 relating to the assessment year 1968-69 during the pendency of the tax reference case.

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