

Thanthi Trust Vs. Assistant Commissioner of Income-tax

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Court : Chennai

Decided On : Feb-27-1998

Reported in : [2000]242ITR487(Mad)

Judge : K. Gnanaprakasam, J.

Acts : [Income Tax Act, 1961](#) - Sections 148

Appeal No. : Writ Petition No. 204 of 1989 and Writ Miscellaneous Petition No. 206 of 1989

Appellant : Thanthi Trust

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : Kala Ramesh, Adv.

Advocate for Pet/Ap. : R. Janakiraman, Adv. for; V. Shanmugham, Adv.

Judgement :

K. Gnanaprakasam, J.

1. The short question involved in this writ petition is whether the notice issued by the respondent as per P. A, No. 47-005-AZ-5117 dated. December 8, 1988, is valid, in demanding the petitioner for the production of the documents listed as items Nos. 1 and 2 in the said notice.

2. The assessee had already filed a writ petition in W. P. No. 1222 of 1979 (Thanthi Trust v. ITO : [1989]177ITR307(Mad) , before this honourable court and the Division Bench of this High Court has passed the following orders wherein paragraph 41 reads as follows (page 337) :

'In our view, on a very careful consideration, the notices for the assessment years 1969-70, 1971-72 and 1972-73 have to be held to be invalid because the reasons do not have a live link or a close nexus. However, for 1970-71, we have to uphold the notice since in paragraph 3 of that notice reference is made to the two promissory notes which have not been brought into account. That will show that the appellant had not submitted a true and full return and this omission of the appellant will confer jurisdiction on the officer.'

3. Therefore, it was held by the Division Bench of this court that the respondent herein had jurisdiction to issue notice for the year 1970-71. In fact, this aspect of the case is not disputed by the petitioner also.

4. But, however, the learned advocate for the petitioner contends that under the guise of issuing a notice, which is only a re-enquiry and not an original enquiry, the respondent is not entitled to have a 'roving enquiry' or a 'fishing enquiry'.

5. The fact that the respondent has called upon the petitioner to produce the documents in items Nos. 1 and 2, viz., item No. 1 ABC News Print Stock Register and item No. 2, Suspense Register, for the period from July 1, 1968, to June 30, 1969, which were already produced and verified by the respondent is not in dispute. It is therefore submitted that the petitioner cannot once again be compelled or called upon to produce the very same documents and, therefore, the petitioner questioned the right of the respondent in issuing the notice in question, only in respect of the documents shown in items Nos. 1 and 2 which had already been produced and assessed. The said demand by the respondent is nothing short of making a fishing enquiry and the same cannot be done.

6. The learned advocate for the petitioner therefore strenuously submitted that the documents items Nos. 1 and 2 in the impugned notice, cannot at all be called to be produced once again, as they had already been produced and they do not also fall

under the category of 'escaped income' and the respondent cannot reopen the assessment in respect of items Nos. 1 and 2. He has referred to the judgment reported in *Madhya Pradesh Industries Ltd. v. ITO* : [1965]57ITR637(SC) and pointing out to the same, submitted that no doubt, the Income-tax Officer has got power to issue notice for reassessment, but at the same time, under the guise of reassessment, the Department is not entitled to make a fishing enquiry or an investigation with the object of reviewing the previous order. Therefore, the petitioner submitted that the notice issued by the respondent calling upon the petitioner to produce items Nos. 1 and 2 is not proper. But, at the same time, the petitioner is ready and willing to produce the relevant documents in respect of items Nos. 3 and 4 mentioned in the impugned notice, or any other documents which were not originally verified and assessed for the assessment year 1970-71. In view of the said matter, the petitioner contends that the impugned notice is invalid and illegal and, therefore, the respondent should be restrained from proceeding further in the assessment proceedings.

7. It is further submitted that the impugned notice was issued under Section 147(a) of the Income-tax Act, and the same was issued after the expiry of four years and, therefore, the respondent has no competency or jurisdiction to proceed with the reassessment in respect of items Nos. 1 and 2 which were already verified and assessed. The further case of the petitioner is that the notice was issued under Section 147(a) read with Section 148 of the Income-tax Act. Section 147 of the Act deals with tax which has escaped assessment for that year. Section 148 of the Act deals with the service of notice on the assessee before making the assessment and reassessment or recomputation under Section 147, and that, therefore, the respondent is entitled to issue notice only under these two sections in respect of the escaped assessment and items Nos. 1 and 2 mentioned in the impugned notice, do not fall under the category of 'escaped assessment as these items had already been verified and assessed'.

8. Per contra, learned counsel for the respondent has submitted that in Writ Appeals Nos. 539 and 540 of 1981 (*Thanthi Trust v. ITO* : [1989]177ITR307(Mad)) , a Division Bench of this court has categorically held in paragraph 41 (page 337) of the judgment that :

'However, for 1970-71, we have to uphold the notice since in paragraph 3 of that notice reference is made to the two promissory notes which have not been brought into account. That will show that the appellant had not submitted a true and full return and this omission of the appellant will confer jurisdiction on the officer.'

9. No doubt, the Division Bench of this court upheld the notice issued for the assessment year 1970-71 and the same is not also in dispute. But, whether the respondent is entitled to add or include items Nos. 1 and 2 which were already produced and assessed for the assessment year 1970-71 is a matter which arises for consideration of this court.

10. In view of the judgment in CIT v. Thanthi Trust : [1996]217ITR198(SC) , I am of the opinion that the notice calling upon the petitioner to produce items Nos. 1 and 2 is not legal and proper and the same is beyond the jurisdiction of the respondent. As such, the respondent is not justified in calling upon the petitioner to produce items Nos. 1 and 2 in the notice. It is further pointed out by the petitioner that as far as items Nos. 1 and 2 in the notice are concerned they were already produced and hence they do not fall under the category of escaped income and, hence, it cannot be re-opened once again under the guise of reassessment. The petitioner also pointed out that it is not the original enquiry to call for all the documents and it is only a re-enquiry in respect of items Nos. 3 and 4 which were omitted and, hence, the respondent is not entitled to call upon the petitioner to produce items Nos. 1 and 2 as stated in the impugned notice.

11. I see some force in the said argument and, therefore, I come to the conclusion that the respondent has no right to call upon the petitioner to produce the document mentioned in the impugned notice. But, at the same time, the respondent is at liberty to call upon the petitioner to produce items Nos. 3 and 4 or any other documents, which were not produced earlier. In this view of the said matter, this writ petition is allowed and the respondent is hereby restrained from calling upon the petitioner to produce the documents in items Nos. 1 and 2 in the impugned notice. In other respects, the respondent is entitled to proceed with the enquiry and pass an appropriate order in accordance with law.

12. In the result, the writ petition is allowed. But, however, there will be no order as to costs. In view of the order passed in the main writ petition, no order is necessary in the connected writ miscellaneous petition and the same is closed.

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