Thanthi Trust Vs. Assistant Commissioner of Income-tax

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Court : Chennai

Decided On : Feb-03-1998

Reported in : [1999]238ITR117(Mad)

Judge : K.P. Sivasubramaniam, J.

Acts : Income Tax Act, 1961 - Sections 11 and 254(1); Constitution of India - Article 226

Appeal No. : W.P. No. 7560 of 1988 and W.M.P. No. 10948 of 1988

Appellant : Thanthi Trust

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : Kala Ramesh, Adv.

Advocate for Pet/Ap. : V. Shanmugam, Adv.

Judgement :

K.P. Sivasubramaniam, J.

1. This writ petition is filed for the issue of a writ of prohibition prohibiting the respondent-Assistant Commissioner of Income-tax, Central Circle-II, Madras-34, from proceeding with the assessment of the petitioner or from making any assessment order under the Income-tax Act for the assessment year 1974-75.

2. In the affidavit filed in support of the writ petition several anterior facts relating to the nature of the assessee being a trust entitled to exemption under the Income-tax Act, 1961, have been stated in detail. Having regard to the issue under consideration in this writ petition, it is sufficient to mention the following facts alone.

3. It appears that there was a raid in the premises belonging to the petitioner at Madurai, Coimbatore and Tirunelveli and the premises were searched by the officers of the Income-tax Department on September 3, 1976. In the course of the search, certain books of account were seized under Section 132(1) of the Income-tax Act relating to the assessment years 1972-73 to 1977-78, After the seizure of the books of account, the petitioner was called upon to file the return for the assessment year 1974-75. Though the petitioner was able to file the return for the other assessment years, he was not able to file the return for the relevant period since the entire books of account and records have been seized by the Department. The petitioner would further contend that in the circumstances there being no other alternative he was forced to file a return without the books of account having been audited and on February 8, 1978, the respondent had sent a draft assessment order under Section 143(3) read with Section 144Bdenying exemption on various grounds including that the books were not audited as required under Section 12A and the petitioner was called upon to file his objections under Section 144B. The objections were filed and consequently the order of the Income-tax Officer was passed on April 29, 1978.

4. An appeal was filed before the Commissioner of Income-tax (Appeals). Before the Commissioner of Income-tax it was contended by the petitioner that the trust had no reason to get the accounts audited inasmuch as there was no positive income and there was only loss and in any case, the audit has to be completed only before the return was filed and as stated earlier audit could not be completed since the books of account had been seized. The petitioner submitted before the Commissioner of Income-tax that in the petitioner's own case the Madras High Court has held that they were entitled to the benefit of Section 11 and the appeal filed before the Supreme Court was also rejected and that thus as a result of the judgment of the Supreme Court, it has to be held that the petitioner was entitled to

the benefit of Section 11. The Commissioner of Income-tax after considering the submissions made by the assessee, held that in view of the decision of the Supreme Court the assessee was covered by the provisions of Section 11 and directed the Income-tax Officer to verify the admissibility by permitting the petitioner to produce all the necessary details for verifying the petitioner's claim. The Income-tax Officer was also directed to recompute the income after providing reasonable opportunity to the assessee for furnishing all the materials for verification of the claim of exemption under Section 11 and to recompute the income according to law.

5. The respondent herein aggrieved by the said decision filed an appeal before the Income-tax Appellate Tribunal, Madras Bench, in I. T. A. No. 1872/Ms of 1984. The assessee/petitioner herein filed cross-objections before the Tribunal contending that the Commissioner of Income-tax (Appeals) ought to have considered that inasmuch as the assessee did not file objections to the draft assessment order within the statutory period provided under the Act, the Income-tax Officer was bound to complete the assessment within the time prescribed thereon and that since the Income tax Officer did not complete the assessment within the prescribed time, the assessment for the assessment year 1974-75 was barred by time and that, therefore, the assessment was beyond the period of limitation.

6. The Tribunal by their order dated June 10, 1987, disposed of both the appeal and the cross-objections by a common order. The appeal was dismissed after upholding the order of the Commissioner of Income-tax and the Tribunal held that inasmuch as the issue of verifying the claim under Section 11 had already been remitted back by the Commissioner of Income-tax to the file of the Income-tax Officer for reconsideration, the Income-tax Officer was directed to consider the exemption claimed by theassessee in accordance with the relevant provisions of law as applicable to the assessment year 1974-75. The Tribunal did not consider the cross-objections on merits but held that it was also open to the assessee to put forward his claim of limitation and jurisdiction in making the assessment and the Income-tax Officer was also directed to give an opportunity to the assessee to file the audit certificate which was not filed earlier. The Tribunal also observed that the

Income-tax Officer was at liberty to complete the assessment in accordance with law after giving due opportunity of hearing to the assessee. But while passing the order, the Tribunal observed that both the appeal and the cross-objection filed by the assessee were dismissed. Aggrieved by the expression that the cross-objection had been dismissed, the assessee filed a miscellaneous petition in M. P. No. 14 of 1987 which resulted in the Tribunal issuing a corrigendum. Paragraph 7 of the original order was substituted to the effect that the Tribunal confirmed the order passed by the Commissioner of Income-tax (Appeals) and dismissed the appeal filed by the Department and that the cross-objection filed by the assessee will be treated as allowed for statistical purposes.

7. Subsequently, a reference application was filed by the assessee before the Tribunal to refer the dispute to the High Court by stating certain questions of law as arising out of the order of the Tribunal dated June 10, 1987. By order dated December 9, 1987, the reference application was dismissed by the Tribunal, Thereafter the Income-tax Officer appears to have taken steps to call upon the assessee to furnish particulars regarding the assessment years 1974-75 and 1975-76. Consequently, the present writ petition has been filed for the issue of a writ of prohibition on the ground that inasmuch as the assessment was barred by limitation the Income-tax Officer had no jurisdiction to proceed further in making the assessment for the year 1975-76 (1974-75 ?).

8. Mr. V. Shanmugham, learned counsel appearing for the petitioner, contends that inasmuch as the cross-objection pertaining to the issue of limitation was allowed, the Tribunal was wrong in having sustained the order of the Commissioner of Income-tax (Appeals). In having remitted the matter to the Income-tax Officer for proceeding with the assessment. The Income-tax Officer had no jurisdiction to proceed further in view of the fact that the assessment was beyond the period of limitation.

9. Mrs. Kala Ramesh, learned counsel appearing for the respondent, contends that the scope of the order of the Tribunal was clear, namely, that it was the mere order of remand leaving the issue of limitation open for consideration by the Income-tax Officer and that it cannot be disputed that the Income-tax Officer had

jurisdiction to consider the issue of limitation. The order allowing cross-objection on the miscellaneous petition filed by the assessee was only to rectify a technical defect in the original order of the Tribunal stating that the cross-objection was dismissed. At any rate,even if the assessee was aggrieved by the order of the Tribunal rejecting his petition for reference under Section 256(1) of the Act, it was open to him to have pursued his statutory remedies under Section 256(2) of the Income-tax Act before this court.

10. We may at once deal with the effect of the order of the Tribunal and consider whether there is any basis for the apprehension of the writ, petitioner. The petitioner was, in fact, not aggrieved by that portion of the order of the Commissioner of Income-tax dated March 24, 1984, remitting the case to the Income-tax Officer for recomputing the income and for verification of the claim for exemption under Section 11 of the Act. As against the said order no appeal was filed by the assessee. Though in the cross-objection filed by him in the appeal by the Department a passing contention is raised by the assessee by observing that the order of the Commissioner was erroneous, the fact remains that the cross-objection was directed only as against the non-consideration of the issue of limitation by the Commissioner as could be evident from the petitioner's own statement in paragraph No. 23 of his affidavit filed in support of this writ petition. The Tribunal while dismissing the appeal and confirming the order of the Commissioner of Income-tax (Appeals) in paragraph No. 6 of its order, permitted the assessee to put forward his claim of limitation and jurisdiction in making the assessment before the Income-tax Officer. The Tribunal did not deal with the issue of limitation on merits, but left the issue to be agitated before the Income-tax Officer. However, in the concluding paragraph of its order (paragraph No. 7) an unintended technical mistake had crept in by the observation that the appeal as well as the cross-objection stood dismissed. This mistake was rectified by issuing a corrigendum to paragraph No. 7 alone to the effect that the cross-objection will be treated as allowed for statistical purposes. It is pertinent to note that the Tribunal even while issuing a corrigendum did not go into the merits of the issue of limitation nor set aside its directions contained in paragraph No. 6 of its order permitting the assessee to put forward his claim of limitation and jurisdiction in making the assessment. It is also relevant to note that even subsequently while

dismissing the reference application the Tribunal has repeated that inasmuch as it was open to the assessee to put forward his claim of limitation in making the assessment, the assessee cannot be aggrieved by the order of the Tribunal.

11. In the said circumstances the contention of the petitioner that the expression of the Tribunal to the effect that the cross-objection was allowed should be construed as having upheld his plea of limitation, is to say the least, unrealistic. The judgments and orders of courts and Tribunals cannot be construed or interpreted like Acts of Parliament or as mathematical theorems. The ultimate word in the judgment expressed as 'allowed', 'dismissed', 'ordered accordingly', etc., cannot be blindly applied de horsthe actual findings and directions contained in the judgment. Therefore, I am inclined to hold that the effect of the Tribunal's order was only to allow the parties to agitate the issue of limitation before the Income-tax Officer, without the Tribunal rendering any finding on the said issue.

12. It cannot be disputed that the powers of the Tribunal for ordering a remand are wide inclusive of issuing a direction to the lower authority to consider and dispose of the claims in accordance with law, on the basis of the facts to be made available during the enquiry before the lower authority. In interpreting the powers of the Tribunal and the expression 'pass such further orders thereon as it deems fit' as contained in Section 33(4) of the Indian Income-tax Act, 1922, and the corresponding Section 254(1) of the Income-tax Act, 1961, the Supreme Court has held so in the following cases : (1) Hukumchand Mills Ltd. v. CIT : [1967]63ITR232(SC) ; (2) CIT v. National Taj Traders : [1980]121ITR535(SC) ; and (3) CIT v. Assam Travels Shipping Services : [1993]199ITR1(SC) .

13. It is neither contended before me nor can it be contended that the Income-tax Officer does not have jurisdiction to decide a legal or jurisdic-tional issue.

14. Learned counsel for the petitioner seeks to place reliance on the following judgments in support of his contention that the order of the Commissioner of Income-tax and the Tribunal are unsustainable.

15. In CIT v. Estate of Late N. Veeraswami Chettiar : [1963]49ITR13(Mad) , a Division Bench of this court was dealing with a case (at page 20) where the

appellate authority while accepting the contention that the assessment was made in violation of the bar of limitation, yet purported to give a direction to proceed with the assessment, it was held that such an order would be invalid. In that case a contention was also raised on behalf of the Department as though where the Income-tax Officer was giving effect to a direction of the appellate authority under Section 31 of the Indian Income-tax Act, 1922, there was no bar of limitation. This contention was held to be unacceptable. Further, in that case, the fact that the impugned notice had no validity was not denied by the Department. None of these reasons is applicable to the present case. Neither the Commissioner of Income-tax nor the Tribunal went into the issue of limitation.

16. In N. Naganatha Iyer v. CIT : [1966]60ITR647(Mad) , a Division Bench of this court was concerned with a case where a direction was given by the Appellate Assistant Commissioner conferring jurisdiction on the Income-tax Officer where he was not lawfully seized of jurisdiction. In that case notices were issued by the Income-tax Officer under Section 34(1)(a) of the Indian Income-tax Act, 1922. The Appellate Assistant Commissioner after setting aside the assessment directed the Income-tax Officer to proceed under Section 34(1)(b) of the Act. This was held to be illegal and, therefore, the ratio of the said ruling cannot be relied upon.

17. In CIT v. Nanalal Tribhovandas : [1975]100ITR734(Guj) , a Division Bench of the Gujarat High Court was dealing with a pleading on behalf of the Department similar to the case reported in CIT v. N. Veeraswami Chettiar : [1963]49ITR13(Mad) , namely that a direction by the appellate authority to the Income-tax Officer to proceed with or to reopen the assessment would clothe the Income-tax Officer with power to proceed further ignoring the issue of jurisdiction or limitation. Hence, the said ruling also cannot govern the facts of this case.

18. In the present case, all that the Tribunal has done was to leave the issue of limitation open to be agitated before the Income-tax Officer and the Income-tax Officer is by no stretch of imagination vested with jurisdiction or in any manner directed to ignore the question of limitation. On the other hand, there is a specific direction which requires the Income-tax Officer to consider the question of limitation as raised by the assessee.

19. It is also pertinent to note that as noted earlier as against the rejection of the reference application by the Tribunal under Section 256(1) of the Act, the petitioner has not chosen to move this court under Section 256(2) of the Income-tax Act. It is true that there is no bar for invoking the jurisdiction of this court under article 226 of the Constitution of India even though he has not pursued his further remedies under Section 256 of the Income-tax Act. None the less there is a valid direction by the Tribunal to the Income-tax Officer to consider the issue of limitation as raised by the petitioner and thus there is no question of any lack of jurisdiction on the part of the Income-tax Officer to consider the issue of limitation, so as to warrant a writ of prohibition.

20. Having regard to the aforesaid reasons I am unable to accept the contentions raised by the petitioner and the writ petition is dismissed. No costs. Consequently, connected W. M. P. is also dismissed.