

M.i.E and R and anr. Vs. Commissioner of Sales Tax and ors.

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Court : Jammu and Kashmir

Decided On : Feb-18-2005

Judge : Permod Kohli, J.

Acts : Company Act, 1956 - Section 25; ;Jammu and Kashmir Urban Immovable Property Tax Act, 1962 - Sections 3, 4(1) , 10(3) and 81; ;Income Tax Act - Section 10(22)

Appeal No. : OWP(PT) No. 341/01

Appellant : M.i.E and R and anr.

Respondent : Commissioner of Sales Tax and ors.

Advocate for Def. : A.H. Naik, Adv. General

Advocate for Pet/Ap. : S.C. Dutta, Adv.

Disposition : Appeal dismissed

Judgement :

Permod Kohli, J.

1. The petitioner-Institute is a Company registered under Section 25 of the Company Act, 1956. The petitioner is an educational institution and claims to be engaged in providing education to the students, in research and training in the

fields of education, social welfare, modern technologies and human resources development. It is stated that the Institute has 60 years of dedicated service in the field of education and is duly recognized. Its income is utilized solely for the promotion of its objects as set forth in the memorandum of association and no part of income has been utilized or transferred directly or indirectly by way of dividend, bonus or profit to the shareholders of the Company. It is further stated that the Institute is duly recognized by the Ministry of Science and Technology, Govt. of India as a scientific and industrial research organization. It has three wings i.e. (i) Child and Social Welfare Wing (ii) Experimental School (Model Academy) (iii) MIER College of Education. It is stated by the petitioner being a Charitable Institute is entitled to exemption under the provisions of J&K; Urban Immovable Property Tax Act, 1962. The Institute is also availing exemption under the provisions of Income tax on its income which is utilized for (SIC) ritable purposes. The petitioner was assessed to tax for valuation pe(SIC) of 1980 to 1985 and on 25.08.1980 objections were filed by it, claiming exemption in terms of Clause (e) of Sub-section (1) of Section 4 of the Urban Immovable Property Tax Act (hereinafter called as Act). The assessing authority held the petitioner entitled to such exemption under Clause (d) of (e) and (ee) of Sub-section (1) of the Section 4 of the Act. It is further alleged that no tax was imposed upto 31.03.1991. It is further stated that petitioner received notice of demand from the assessing authority for the valuation period 01.04.1991 to 31.03.1994 showing that the petitioner was assessed under Section 81 for the aforesaid period. Objections were filed to the assessment made. The petitioner also preferred an application claiming exemption under Sub-clause (e) of Section 4(1) of the Act being an Educational Institution. The assessing authority was required to exempt the petitioner from payment of property tax. Simultaneously another application was preferred in Form-M of Rule 20 of the Act with respondent No. 1 accompanying with copies of certain documents as listed in para No. 8 of the writ petition. This application was with a view to seek exemption certificate as provided under Rule 20 of the Act. It is further alleged that the assessing authority on checking the records and books of accounts recommended the case of the petitioner to respondent No. 1 for grant of exemption. The assessing authority made the following report:

From evidence filed, it is clear that the institution has income from fees from students, interest from bank deposits etc. which is mostly spent on maintenance and expansion of the school I institution itself, besides some donation and charity work, excess amount is kept in bank and balance sheet filed indicates nil profit in each account period. Clause 4 of the Constitution and byes-laws provides for conducting donation, charity and welfare schemes for the public in general and Clause 5 of the bye laws provides for non-profit entity of the institution. A few entries of statements have been checked with the relevant ledgers. Under the circumstances as discussed above, it is requested that the institution under reference may be considered for exemption from property tax for the period 1991-92,1992-93 and 1993-94 respectively.

2. It is stated that thereafter nothing was heard either from assessing authority or from respondent No. 1. The petitioner, however, received a demand notice dated 12.12.1998 containing demand of Rs. 2,69,520/- for the period April 1991 to March 1997. It was revealed from this demand notice that the assessment was made for the period April 1991 to March, 1997. The petitioner applied for copy of the assessment on 14.12.1998 whereupon copy of the assessment order dated 01.04.1991 was issued to it. The assessment order was accordingly challenged in appeal. As stated in the writ petition, appeal was preferred on variety of grounds including that the petitioner was entitled to exemption from the payment of tax which exemption was being enjoyed by petitioner since 1985. The petitioner institute being non-profitable organization is a charitable institute and thus entitled to exemption. Income exclusively applied for the charitable purposes. It is further alleged that the records were also produced before the appellate authority, which include books of accounts, copies of assessment order under the Income Tax Act whereunder the petitioner was considered a charitable Institute and granted exemption from payment of tax under Section 10(22) of the Income Tax Act. The petitioner also claimed violation of principle of natural justice. Appeal preferred by the petitioner came to be accepted by the appellate authority holding that the petitioner is a charitable institute. The Income is solely used for education purpose and not for profit and he is thus liable to exemption under Section 4(a)(e) of the Act. The demand was held to be contrary to law.

3. The petitioner, however, came to be served with a notice dated 22.11.1999 under Sub-section 3 of Section 10 of the J&K; Urban Immovable Property Tax Act under the signature of Dy. Sales Tax Commissioner (Judicial), Jammu proposing to annul the order dated 24.04.1999 passed by the Deputy Sales Tax Commissioner (Appeals), Jammu and for restoration of the assessment order dated 01.04.1991 passed by the assessing authority. On receipt of notice, petitioner filed objections to the notice dated 22.11.1999 challenging the proposed action on variety of grounds and claiming exemption as a charitable institute. The petitioner received another notice dated 10.04.2000 regarding hearing of suo-moto revision under Section 3 of the Section 10 of the Act against the order of the appellate authority holding the petitioner to be exempt from the payment of property tax. Hearing was fixed on 24.04.2000. The petitioner appeared through counsel before respondent No. 1 who after hearing counsel passed the impugned order dated 21.12.2000 and quashed the order of the appellate authority. It is this order, which has been called in question by the petitioner along with demand notice as also assessment order passed by respondent No. 3. The petitioner seeks further direction to respondents to declare the petitioner as charitable institute and not liable to pay tax under the provisions of J&K; Urban Immovable Property Tax Act etc.,

4. Through the disclaimer filed to the writ petition, respondents have seriously contested the claim of the petitioner-Institute. It is alleged that as per bye laws (i) the Institute has to grant concession, scholarship and exemption of fee to the poor students and was also required to set up Child, Women and Social Welfare Centres and take Vocational Programme (ii) to make arrangements for formal and non-formal education, training and rehabilitation of adults, women, exceptionally gifted and handicapped children and destitute, (iii) to arrange charitable activities and undertake multifarious programmes for the welfare and such like activities as provided under the bye laws. However, from the record it has been established that it is a profit making Institute and no concession has been given to poor students or income has been used for the betterment of the destitute and social welfare centers, neither it has been established that the Institute has arranged any formal or non-formal training and rehabilitation of the adults and based upon this fact, the claim of the petitioner for grant of exemption as a charitable/religious

institute has been rejected. The respondents have also denied the status of the petitioner-institute as charitable institute as defined under the provisions of UIP Act, 1962 and Rules made therein. It is further alleged that the exemption granted for the valuation period 1980 to 1985 has no relevance as far the subsequent period is concerned. Regarding allegations of the petitioner that its exemption application was not rejected, it is stated that the petitioner was aware that his claim has been rejected by the competent authority on the basis of record and the report submitted by the Dy Sales Tax Commissioner (Admn.),Jammu vide letter No. 32/ST/DCJ/462 dated 22.03.1997. In view of the above facts, the Assessing Authority chose to pass the assessment order for the period April 1991 to March 1997 against the petitioner. It is also stated that more than Rs. one crore is lying in the fixed deposits of the institute on which interest to the tune of Rs. 21 lac has accrued which clearly indicates that the petitioner institute is a profit making and commercial institute. It is also alleged that the grant of exemption to the income tax has nothing to do with the claim of the petitioner for similar exemption under the UIP Act. The scope of two Acts is different. Regarding validity of the order of the appellate authority declaring the petitioner to be exempt from payment of tax and direction to set-aside the order of assessing authority, it is stated that the appellate authority has no jurisdiction and power to grant exemption as such power lies with the Commissioner under Rule 20 and therefore, order of appellate authority was bad, which has been rightly set aside vide impugned order.

5. From the pleadings of the parties and record produced following admitted facts emerge:

(i) That the petitioner was granted exemption from payment of UIP Tax under the J&K; UIP Tax Act for the valuation period 1980 to 1985 and no tax was imposed upto 31.03.1991;

(ii) That the petitioner applied for grant of exemption certificate in Form No. M-I to respondent No. 1 under Rule 20 of the Rules framed under the Act;

(iii) That the Assessing authority has assessed the petitioner for the valuation period w.e.f. 01.04.1991 to 31.03.1997 vide impugned order dated 01.04.1991 and created a demand of Rs. 2,69,520/- and appeal preferred therefrom was allowed

by the appellate authority vide order dated 22.04.1999;

(iv) That suo-moto revisional proceedings were instituted by respondent No. 1 by issuing notice dated 22.11.1999 under Section 10(3) of the Act; and

(v) That the impugned order dated 22.12.2000 has been passed by respondent No. 1 quashing the appellate order in exercise of suo-moto revisional jurisdiction.

6. The genesis of the issue is alleged rejection of petitioner's application for grant of exemption certificate by respondent No. 1. As noticed above, the petitioner had applied for grant of exemption in Form M-I under Rule 20 of the Rules framed under the UIP Act. The petitioner has specifically alleged that the applications were never rejected and at least there is no communication of any such rejection to the petitioner. The petitioner applied for the copy of the order of rejection on 18.04.1999, however, no such copy was supplied. The stand of respondents is that rejection order was communicated to the Deputy Sales Tax (Admn.), Jammu on 27.03.1997. Copy of this order has been placed on record as Annexure-K. As is evident from the aforesaid copy, this order was never addressed to the petitioner nor copy endorsed to it. It appears to be internal correspondence. The respondent No. 1 in the impugned order dated 21.12.2000 has specifically dealt with the question of rejection of the petitioner's claim for the exemption and stated as follow:..M/s Model Institute of Education and Research, Jammu (hereinafter referred to as Institute) submitted an application before the Commissioner UIP Tax on 02.03.1995 for declaring the Institute as a charitable institution in terms of Section 4(e) of the J&K; UIP Tax Act, 1962 read with Rule 20 of the Rules made under the Act. On examination of the documents accompanied with the application, it was found that the Institute was not qualifying for being declared as a charitable Institution in terms of the above provisions of the Act. The intimation of rejection of application was communicated to the Dy. Sales Tax Commissioner (Admn.), Jammu on 27.03.1997, However, this was not communicated to the institute....

The Advocate representing the Institute had asked for a copy of the order passed by the Commissioner rejecting the application for exemption. It is true that no formal order in this behalf has been issued by the Commissioner. But this is, at

best, a technical flaw as the essence of the notice is same as that of the order...

(Emphasis supplied)

7. From the above admission of respondent No. 1, it is apparent that no order rejecting the claim of the petitioner for grant of exemption certificate under Rule 20 read with 4(1)(e) was ever passed. It is strange that respondent No. 1 instead of realizing its own folly, tried to justify the same. Respondent No. 1 was exercising the power under the Statute and therefore, he was acting as an adjudicatory authority to decide the question of grant or refusal of exemption under law. He was at least discharging the quasi-judicial function. Assuming respondent No. 1 was required to perform only administrative function, still keeping in view the nature of the power to be exercised by respondent No. 1 under the Statute, it was obligatory upon said respondent to have passed a written, speaking and reasoned order. It has been admitted by respondent No. 1 in the impugned order that no such order was ever passed. It is shocking to Notice that authority exercising the statutory duty can act in such a manner. Not only the authority exercising quasi-judicial function, but even administrative authority discharging adjudicatory duties is required to pass speaking and reasoned order to dispel any accusation of being unfair. The Apex Court in (1970) 1 SCC 764 titled *Messrs. Mahabir Prasad Santosh Kumar v. State of U.P. and Ors.* held as under:

7. Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problems before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-

judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of expediency or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim...

Similar view was expressed by the Apex Court in : AIR 1976 SC1785 The Siemens Engineering and . v. The Union of India and Anr. wherein it is held as under:

6. ...It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai v. Testeels Ltd.. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law....., it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....

8. The action of respondent No. 1 in the impugned order dated 21.12.2000 holding that the claim of the petitioner for grant of exemption stands rejected, is not sustainable in law in absence of their being any order what to speak of a legal and

valid order. There is another aspect of the matter. Admittedly, the petitioner was enjoying the exemption under the UIP Act upto year 1991 what were the circumstances that persuaded respondent No.1 to withdraw the exemption or deny the exemption for future should have been spelt out by passing a reasoned order. Therefore, it was necessary for respondent No. 1 to pass a fresh order denying exemption to the petitioner giving circumstances for deviation from its earlier decision, which definitely must have been passed on the facts and circumstances relevant for the purpose. The petitioner has also relied upon exemption granted to the petitioner under the Income Tax Act. The provisions of UIP Act and Income Tax Act regarding exemption are:

Provision of Income Tax Act Provisions of J&K; Urban Immovable Property Tax Act
Section 2(15) Sub-section 1 of Section 4 'Explanation' 'Charitable Purpose' includes relief 'Charitable Purpose' includes relief of the poor, education, medical relief of the poor, education, medical relief and the advancement of any other and advancement of any other object of general public utility of general public utility.
'Section 10(22) Sub-clause (a) to Clause (e) to Sub-section (1) of Section 4. 'Any Income of a university and (a) 'Property exclusively used for other educational institution, charitable or (religious) purposes existing solely for educational purposes and not for purposes of profit.' (b) and the property owned by a charitable (or religious) institution or place at the disposal of any such institution for charitable or (religious) purposes free of rent or any other consideration in lieu thereof.

9. Based upon the similarity of the provisions, it is contended on behalf of the petitioner that petitioner is entitled to similar exemption under J&K; UIP Act also as it is already exempted from tax under the Income Tax Act. From the perusal of provisions of both the Acts, it transpires that these provisions are almost paramateria. However, without dealing with this issue in detail and keeping in view the fact that the grant of exemption or its refusal is prerogative of the respondent No. 1 under the Statute, the issue, therefore, must be dealt with and decided by said authority enjoined with the statutory duty under law. This Court should not take upon itself the duties of statutory authority as decision has to be taken by the said authority in accordance with law and on the basis of facts before it.

10. Since respondent No. 1 did not decide the question of exemption and without deciding the same, it was totally illegal on its part to have fastened liability upon the petitioner to pay tax under the provisions of the Act. Respondent No. 1, has thus exercised power of revision Under Section 3 of Section 10 of the UIP Act, 1962 in gross violation of law. When these powers were invoked, the petitioner's application for grant of exemption was pending since 1995, which fact is itself mentioned in the impugned order. Therefore, the jurisdiction exercised by respondent No. 1 in passing the impugned order is totally mis-directed and has resulted in abuse of the process of law.

11. In view of the above findings, impugned order dated 21.12.2000, is hereby quashed. Respondent No. 1 is directed to decide the application of the petitioner dated 02.03.1995 under Section 4(e) read with Rule 20 of the J&K; UIP Act, 1962 and Rules framed therein in accordance with law and after affording opportunity of being heard to the petitioner. In the event respondent No. 1 rejects the claim of the petitioner for grant of exemption, he shall pass written speaking and reasoned order. As a consequence of quashment of impugned order, demand notices are also deemed to be inoperative and non-existent in the eyes of law. Further action shall depend upon the passing of order by respondent No. 1.

This petition is, accordingly, disposed of in view of the above directions.