

Hope Textiles Ltd. And Anr. vs Union Of India (Uoi) And Ors. on 27 October, 1993

Equivalent citations: [1994]205ITR508(SC), 1995SUPP(3)SCC199, AIRONLINE 1993 SC 130, (1994) 205 ITR 508, (1994) 73 TAXMAN 188, (1994) 120 TAXATION 227, (1994) 117 CUR TAX REP 314, 1995 SCC (SUPP) 3 199

Bench: B.P. Jeevan Reddy, S.P. Bharucha

ORDER

1. This appeal is preferred against the decision of the Madhya Pradesh High Court. The assessee is a limited company. For the assessment year 1971-72, it filed a return on the basis of which an order of assessment was made on March 27, 1974. By the said order, certain losses disclosed by the assessee were accepted. On February 21, 1976, a notice under Section 148 of the Income-tax Act, 1961, was issued to the appellant, in pursuance whereof it filed a return on March 27, 1976, for disclosing further losses. No orders were passed till about September, 1981, in the reassessment proceedings. The appellants say that on that date, they were informed that no order will be passed pursuant to the notice under Section 148. Thereupon, the appellants approached the High Court by way of a writ petition for issuance of mandamus to the Income-tax Officer to pass orders in pursuance of the aforesaid notice. The writ petition was dismissed observing that no mandamus can be issued compelling the Income-tax Officer to make an order of assessment beyond the period of limitation prescribed by Section 153(2). In this appeal, it is urged by Sri Sen, learned Counsel for the appellant, that by virtue of Clause (ii) of Sub-section (3) of Section 153, the High Court could have directed the Income-tax Officer to pass an order of reassessment pursuant to the aforesaid notice, notwithstanding the expiry of the period prescribed in Sub-section (2) of Section 153. We are not prepared to agree. A writ of mandamus can be issued to a statutory authority to compel it to perform its statutory obligation. It cannot issue to compel him to pass an order in violation of a statutory provision. The Income-tax Officer had no power to make a reassessment beyond the period prescribed by Sub-section (2), unless the case fell under any of the other sub-sections under Section 153 or other provision extending the said period of limitation. No such provision is brought to our notice. The only provision relied upon is Clause (ii) in Sub-section (3). Sub-section (3) reads as follows :

(3) The provisions of Sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of Sub-section (2A), be completed at any time-

(i) where a fresh assessment is made under Section 146 ;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order, under Section 250, 254, 260, 262, 263 or 264 or in an order of any court in

a proceeding otherwise than by way of appeal or reference under this Act ;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under Section 147.

2. On a reading of Clause (ii), it would be evident that it in no way helps the appellants. It contemplates a situation where certain orders have to be passed in consequence of or to give effect to any finding or direction contained in any order passed under the provisions referred to therein or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act. This sub-clause cannot be understood as empowering the High Court to give a direction to the authority under the Act to ignore the period of limitation prescribed in the Act.

3. Sri Sen, learned Counsel, relies upon the decision of the Allahabad High Court in *Vithaldas v. ITO* [1969] 71 ITR 204. In that case, an order of assessment was made subject to rectification under Section 35 of the Act. The order of assessment was dated December 15, 1955. Under Section 35, the rectification could have been made only by March, 1960. It was not done. The assessee moved the High Court by way of a writ petition in 1967. It was allowed holding that the Income-tax Officer was under an obligation to make an order of rectification and that the expiry of the period of limitation is no answer. We must understand the said direction as confined to the particular facts and circumstances of that case. The said decision cannot be understood as laying down a proposition that an authority under the Act can be directed to make an order beyond the period of limitation prescribed by the statute.

4. The appeal accordingly fails and is dismissed. No costs.