

Kamlapat Motilal vs Income-Tax Officer And Another. on 17 November, 1955

Equivalent citations: [1956]29ITR192(ALL)

JUDGMENT

This is a petition under article 226 of the Constitution the disposal of which has been delayed owing to an order directing that it be heard at the same time as in an income-tax reference with which it is now apparent it has very little connection.

The petitioner is a firm which runs a sugar mill, and in its income-tax return of the year 1942-43 it claimed that a sum of Rs. 76,836, should be allowed as a deduction under section 10(2) of the Income-tax Act, 1922. The relevant accounting year was from October 1, 1940, to September 30, 1941, and the firm's case was that in the year preceding the accounting year it had sold 62,983 pounds of sugar, but as delivery of the sugar was given in the accounting year excise duty paid by the firm thereon amounting to Rs. 76,836 was a permissible deduction in the latter year. This deduction was disallowed by the Income-tax Officer on the ground that it related to the sales effected during the preceding year. From that order the firm went in second appeal to the Income-tax Appellate Tribunal, which by an order dated the August 17, 1947, directed that "the excise duty of Rs. 76,836 should be adjusted as an expenditure due and allowable for the earlier year of assessment, i.e., 1941-42." It is common ground that, for reasons upon which it is not necessary to enter, the direction of the Appellate Tribunal has not been carried out, and that the Commissioner of Income-tax, Lucknow, formally notified the petitioning firm in 1948 that he was unable to make any adjustment in accordance with the Tribunal's order.

The firm thereupon filed this petition and the relief which it seeks is the issue of a writ in the nature of mandamus "for the enforcement of the right conferred on the applicant by the order of the Tribunal." In our opinion the petition is misconceived. The Appellate Tribunal purported to make the direction upon which the firm relies under Section 35(2) of the Income-tax Act which empowers the Appellate Tribunal, inter alia, to rectify any mistake apparent on the record of the assessment proceedings, but the learned Advocate-General who appears for the firm has conceded that, in view of the four years period of limitation within which action must be taken under Section 35, that section has no application. He has however sought to argue that the direction given by the Appellate Tribunal was one which that Tribunal could validly make under Section 33(4) of the Act which provides that "the Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."

In our opinion the powers of the Appellate Tribunal under Section 33(4) are limited to the passing of such order as it thinks fit to make in the proceedings which are then before it on appeal and in our judgment it has no power under this section to pass an order or give directions with reference to the proceedings of an earlier year which are concluded. If the firm was dissatisfied with the assessment

order in respect of that earlier year, 1941-42, and failed to obtain relief by way of an appeal, its remedy was to ask the Tribunal to state a case under Section 66 of the Act. A writ of mandamus cannot in our opinion be issued by this Court to enforce the order of the Tribunal passed without jurisdiction during the hearing of the appeal relating to the assessment year 1942-43 in respect of assessment for the year 1941-42.

In our opinion the petitioner has failed to establish a legal right to the relief which he seeks and this petition fails. It is accordingly dismissed with costs.

December 2, 1955. This matter was placed in the list for a mention today at the request of the learned counsel for the Department on the question of costs. We have heard the learned counsel for both sides and we think the proper order to make is to fix the costs in the sum of Rs. 200, and we direct accordingly.

Petition dismissed.