

Madhya Pradesh Industries Ltd. vs Income-Tax Officer, Special ... on 8 April, 1965

Equivalent citations: [1965]57ITR637(SC)

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Shah, J.

1. Madhya Pradesh Industries Ltd - hereinafter called "the company" - is engaged in the business of mining manganese ore. On March 18, 1952, the company appointed Messrs. J.K. Alloys Ltd - hereinafter called "Alloys" - as its selling agent. In the account year relating to the assessment year 1953-54, the company paid Rs. 1,13,052-8-9 to the selling agents and claimed it as a revenue outgoing in the computation of its profits for that year. The Income- tax Officer made an order of assessment without expressly referring to the claim for allowance to Alloys.

2. On December 26, 1960, the Income-tax Officer issued a notice to the company in exercise of the power under section 34 of the Indian Income-tax Act reciting that having "reason to believe that" the income of the company assessable to income-tax for the assessment year 1953-54 had "(a) escaped assessment, (b) been under-assessed", he proposed to reassess the said income that had "(a) escaped assessment, (b) been under-assessed" and directed the company to deliver a return of the total income of the company assessable for the said assessment year 1953-54. The company by letter dated January 30, 1961, called upon the Income-tax Officer to disclose whether the notice was issued under clause (a) or clause (b) of the sub-section (1) of section 34. It was asserted in the letter that all facts necessary for the purpose of assessment had been fully and truly disclosed in the original assessment, and the notice was misconceived. In reply to this letter the Income-tax Officer on February 16, 1961, informed the company that the notice was issued under section 34(1)(a). The Income-tax Officer also issued "a questionnaire" demanding information about the commission paid together with copies of the agreement with Alloys and correspondence relating to sales through Alloys. On December 21, 1961, the Income-tax Officer informed the company that since the questions were not replied to, he presumed that no correspondence with Alloys existed and that the payment of commission had been made without any justification. Alloys having rendered no service as selling agents.

3. On April 2, 1962, the company presented a petition in the High Court of Judicature of Bombay (Nagpur Bench) praying for the issue of a writ of certiorari under article 226 of the Constitution or an appropriate direction or order under article 227 of the Constitution, calling for the records of the case, and for the issue of writs in the nature of prohibition or mandamus restraining the Income-tax Officer from taking any action or proceedings in enforcement or implementation of the notice dated

December 26, 1960. This petition was rejected in limine by the High Court by order dated April 7, 1962. With special leave, the company has appealed to this court against the order of the High Court.

4. The sole question for determination is whether the High Court acted improperly in refusing to investigate a plea raised by the company that in issuing a notice under section 34(1)(a) of the Income-tax Act the Income-tax Officer acted without jurisdiction and for a colourable purpose. It is necessary, in dealing with that question, to refer in the first instance to the case of the company setting out the course of proceedings which culminated in the original order of the assessment. In its return the company disclosed for the year ending March 31, 1953, Rs. 15,70,587 as its total profits according to its books of account. In the statement under section 38(3) of the Act filed with the return the company disclosed that it had paid Rs. 1,13,052-8-9 as "commission sales" on "different dates" by cheques to Alloys, and Rs. 6,091-4-0 to J. S. Williams on October 4, 1952, by cheque as commission on sales. In the profit and loss account of the company filed with the return an amount of Rs. 29,76,067-10-8 was disclosed as received "by sales less commission". On December 7, 1953, R. K. Gupta, a director of the company, made a statement before the Income-tax Officer stating that commission was paid to Williams on the sales accounted for during the year ended March 31, 1953, and that the same should be allowed as deduction, and that "similar was the case with the commission payable to J. K. Alloys Ltd., which had already been paid subsequently". On February 11, 1954, the Income-tax Officer called upon the company to produce, amongst other documents, a certificate whether any receipt included in the income, profits or gains had been credited or transferred to any assets, capital account, or any other liability account, a similar certificate regarding any credit for important expenses claimed under the head "Profit and Loss A/c", a list of the buyers with full addresses along with quantity, number and net proceeds of export business as well as Indian sales, a statement setting out full details of various items of indirect expenses debited to profit and loss account and a statement of expenses grouped and sorted out under the heads, "wages", "salary" and other emoluments. On June 21, 1954, the company filed the certificates and statements demanded together with a statement showing that out of the sale proceeds, commission paid to Alloys and J. S. Williams was deducted. In the course of assessment proceedings, R. S. Agarwal, a representative of the company, appeared before the Income-tax Officer and agreed that the commission "debited as paid to Williams may be added back", and about Alloys he said that the commission "had already been paid". Thereafter, on February 14, 1955, assessment of the company was completed by the Income-tax Officer.

5. Relying upon this course of proceedings as set out in the petition, it was claimed before the High Court that in the return and profits and loss account filed by it the company had disclosed all information including the payment of commission on sales to Alloys, had produced all books of account necessary for that purpose, had furnished full details of the sales on which the commission was paid and had made all statements required by the Income-tax Officer or necessary in that regard. It was then submitted that as there was no failure to disclose fully and truly all material facts necessary for the assessment "the Income-tax Officer could have no reason to believe that in consequence of the assessee's failure to disclose fully and truly the material facts necessary for the assessment, any income for the year in question had escaped assessment for that year". It was also submitted that by issuing the notice, the Income-tax Officer was seeking to change his earlier

opinion that the item of commission to Alloys was allowable, that the grounds of belief as disclosed by the Income-tax Officer for changing his opinion did not warrant initiation of proceedings under section 34(1)(a) of the Act, and that the impugned notice was "a colourable exercise of powers" and was "in the nature of a fishing enquiry or investigation with the sole object of assessing the company without any authority of law and in breach thereof". Propriety of the order dismissing the petition of the company must be considered on the assumption that the facts averred are true.

6. Section 34(1)(a) of the Indian Income-tax Act, at the relevant time, provided :

"34. (1) If -

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure or the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all materials facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b).....

he may in cases falling under clause (a) at any time within eight years... serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains.... and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were at notice issued under that sub-section".

7. This court in *Calcutta Discount Co., v. Income-tax Officer, Companies District I* observed that the Income-tax Officer has power to issue a notice under section 34(1)(a) only if he has reason to believe (1) that income, profits or gains had been under-assessed and (2) that such under-assessment was due to non-disclosure of material facts by the assessee, and that where facts which invest the Income-tax Officer with jurisdiction to issue the notice do not exist, the assessee may apply to the High Court under article 226 of the Constitution for appropriate relief. The company has asserted that the facts which attract the jurisdiction of the Income-tax Officer to issue a notice under section 34 did not exist, and the impugned notice was issued in colourable exercise of power. Jurisdiction to issue prerogative writs is designed to invest the High Court with authority to superintend the exercise of governmental or other powers by tribunals, authorities, bodies, or persons : it is intended to be exercised in cases where a person has a right and that right is infringed by a tribunal, authority, body or person acting without or in excess of jurisdiction or in violation of principle of material justice, or where it refuses to exercise jurisdiction vested in it by law, or even in cases, where there is an error apparent on the face of the record of a quasi-judicial authority and the act, omission or error results in grave injustice. The jurisdiction is discretionary and the High Court is not bound to issue a writ merely because it is lawful to do so. It is also not intended thereby to supersede the authority and jurisdiction conferred upon the taxing authorities who are invested with

power to deal with the merits of the contentions raised before them : Lalji Haridas v. R. H. Bhatt. The High Court must in each case consider, whether the act or omission complained of has resulted or is likely to result in grave injustice, and whether the party approaching it has another adequate remedy which is equally efficacious, whether he has approached the court without acquiescence, and without undue delay, whether the problem posed raises complicated questions of disputed facts which it would be inappropriate for the High Court to determine, whether the aggrieved party has been guilty of misrepresentation or suppression of material facts, and whether notwithstanding the apparent breach it would be inequitable to grant relief.

8. It is unfortunate that the learned judges of the High Court have not indicated the considerations which persuaded them to reject the petition in limine. There can be no doubt that the averments made in the petition by the company if proved may justify the issue of the writs claimed, for it is the case of the company that the facts which alone invest the Income-tax Officer with jurisdiction to issue the impugned notice did not exist. The company has also submitted that the power under section 34 was sought to be utilised as a mere cloak or pretense for making a "fishing enquiry or investigation with the object of reviewing the previous order". Whether the disclosure made by the company was full and true in respect of all material facts necessary for the assessment cannot obviously be determined in the absence of an affidavit by the Income-tax Officer. Again the plea that the impugned notice was issued with a collateral object could not be rejected without an enquiry.

9. Jurisdiction of the Income-tax Officer obviously arises when he has reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment, income of the assessee has escaped assessment, or has been under-assessed, and when the party claiming relief challenges on oath the existence of the conditions, which confer jurisdiction, and sets out facts which may, unless disproved, support his case, an order dismissing his petition in limine may not properly be made.

10. We may hasten to observe that we are not seeking to lay down any rigid rule about the nature or quantum of enquiry which the High Court in a petition which seeks to challenge the issue of a notice under section 34(1)(a) of the Indian Income-tax Act may make. If the petition on the face of it does not disclose a right to relief, the High Court has undoubtedly power to dismiss it in limine. If there be other grounds which appear to the High Court to be adequate such as delay or acquiescence, existence of an adequate alternative remedy which is equally efficacious, or failure to disclose all material facts which have a bearing on the question of misrepresentation of facts, jurisdiction of the High Court to dismiss a petition in limine cannot be denied. An attempt to short-circuit the procedure provided by the Indian Income-tax Act for investigation of facts which the Income-tax Officer alone is competent to investigate in the first instance may also justify the High Court in rejecting a petition for the issue of a writ under article 226. But where, as in the present case, the claim made is that the Income-tax Officer had no power to issue the notice under section 34, and that the power is exercised not for any legitimate purpose for which it may be used, but for the purpose of making a fishing enquiry and to review a previous order passed in favour of the company, a rule upon the Income-tax Officer to show cause why the order should not be set aside and an opportunity to the authority whose action was challenged either to accept or deny the facts alleged and to set out such other material facts as have a bearing on the question, was at least called for.

11. We may add that we do not desire to fetter the discretion of the High Court to deal with the petition according to law and in the light of the well-recognised principles relating to the exercise of its jurisdiction, after an opportunity is given to the Income-tax Officer to meet the allegations made in the petition. We may also observe that we are constrained to set aside the order because we have no indication as to the grounds on which the High Court has rejected the petition which, prima facie, makes out a case which may require investigation and trial.

12. In the special circumstances of this case, we think that the order of the High Court ought to be set aside and the proceeding remanded with the direction that rule be issued to the Income-tax Officer and the petition be tried. There will be no order as to costs.

13. Appeal allowed. Proceedings remanded.