

Court No. - 34

Case :- WRIT TAX No. - 1569 of 2011

Petitioner :- Haji Ramzan And Sons.

Respondent :- Commissioner of Income Tax And Another

Counsel for Petitioner :- Shakeel Ahmad

Counsel for Respondent :- C.S.C., Income Tax, Ashok Kumar, Manu Ghildiyal

Hon'ble Sudhir Agarwal, J.

Hon'ble Kaushal Jayendra Thaker, J.

1. Heard Sri Shakeel Ahmad, learned counsel for petitioners and Sri Manu Ghildiyal, Advocate, for respondents.
2. This writ petition under Article 226 of the Constitution of India has been filed assailing the order dated 18.07.2011 passed by Commissioner of Income Tax, Allahabad (hereinafter referred to as "CIT") rejecting application for waiver of interest charged under Section 220 (2A) of Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") observing that all three conditions requisite for waiver contemplated under Section 220 (2A) of Act, 1961 cumulatively are not available/exist in the case in hand, hence petitioner is not entitled for waiver.
3. It appears that petitioner filed return for Assessment Year 1990-91 disclosing his income as Rupees 1,80,910/- but Assessing Officer passed assessment order making addition to the total tune of Rs. 20 lacs and odd. In the appeal, Commissioner of Income Tax (Appeal) (hereinafter referred to as "CIT(A)") set aside addition made by Assessing Officer but Tribunal restored order of Assessing Officer and reversed findings of Commissioner of Income Tax (Appeal). Thereafter, petitioner claims to have deposited tax but claim waiver of interest.
4. The Commissioner of Income Tax, who is competent authority to consider the question of waiver, has noticed that Assessee has maintained certain documents showing goods taken on Uchanti

(goods taken on returnable basis from parties) but same were recorded as sales in accounts and thus he was found guilty of undisclosed income leading to evasion of tax and for that reason, Assessing Officer found him guilty of evasion of tax which was affirmed in Appeal. Further, there was nothing to place before authorities concerned to show that it was a case of genuine hardship of Assess. Since these all are findings of fact and it has not been shown that findings recorded by CIT are perverse, we do not find that we can look into matter and examine the same as sitting in appeal since in supervisory jurisdiction of this Court and exercising writ jurisdiction, scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

5. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

6. In **D. N. Banerji Vs. P. R. Mukherjee 1953 SC 58** the Court said:

“Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere.”

7. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in **Waryam Singh and another Vs.**

Amarnath and another AIR 1954 SC 215 and made following observations at p. 571 :

"This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee AIR 1951 Cal. 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

8. In **Mohd. Yunus v. Mohd. Mustaqim and Ors. AIR 1984 SC 38** the Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

9. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: **Nibaran Chandra Bag Vs. Mahendra Nath Ghughu, AIR 1963 SC 1895; Rukmanand Bairoliya Vs. the State of Bihar & ors., AIR 1971 SC 746; Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896; Laxmikant R. Bhojwani Vs. Pratapsing Mohansingh Singh Pardeshi, (1995) 6 SCC 576; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300; M/s. Pepsi Food Ltd. & Anr. Vs. Sub-Judicial Magistrate & ors., (1998) 5 SCC 749; and Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors. (1999) 1 SCC 47).**

10. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: **Rena Drego Vs. Lalchand Soni & ors., (1998) 3 SCC 341; Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171; and Savita Chemical (P) Ltd. Vs. Dyes & Chemical Workers' Union & Anr.,(1999) 2 SCC 143).**

11. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: **Union of India & ors. Vs. Himmat Singh Chahar, (1999) 4 SCC 521).**

12. In **Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82**, the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

13. In **Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer, AIR 2000 SC 931**, the Court said that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

14. In **Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245**, the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact

for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

15. In **Union of India Vs. Rajendra Prabhu, (2001) 4 SCC 472**, the Court observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

16. Similar view has been reiterated in **State of Maharashtra Vs. Milind & ors., (2001) 1 SCC 4; Extrella Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97; and Omeph Mathai & ors. Vs. M. Abdul Khader, (2002) 1 SCC 319**.

17. In **Surya Dev Rai Vs. Ram Chander Rai and others (2003) 6 SCC 675**, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear

ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

18. In **Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294**, the Court said:

“...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.”

19. In **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil (2010) 8 SCC 329**, the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in **Kokkanda B. Poondacha and others Vs. K.D. Ganapathi and another AIR 2011 SC 1353** and **Bandaru Satyanarayana Vs. Imandi Anasuya (2011) 12 SCC 650**.

20. In **Abdul Razak (D) through Lrs. & others Vs. Mangesh Rajaram Wagle and others (2010) 2 SCC 432**, Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

21. In **T.G.N. Kumar Vs. State of Kerala and others (2011) 2 SCC 772**, the Court said that power of superintendence conferred on

the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority.

22. In **Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar (2011) 10 SCC 244**, Apex Court referring to its earlier decision in **Union of India Vs. R.K. Sharma (2001) 9 SCC 592** observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

23. In the present case, we do not find that the order impugned in this writ petition does satisfy any of the relevant considerations, as noticed above, so as to justify interference by this Court in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. In the circumstances, we find no merit in this writ petition.

24. Dismissed.

25. Interim order, if any, stands vacated.

Dt. 24.08.2016

PS