THE HONBLE SRI JUSTICE L.NARASIMHA REDDY AND THE HONBLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No. 249 of 2003

29-10-2014

Commissioner of Income Tax, Rajahmundry. .Appellant

M/s. Godavari Electrical Conductors, Kadiam, East Godavari District. .Respondent

Counsel for the appellant: Sri S.R.Ashok

Counsel for respondent:Smt. K.Neeraja

THE HONBLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HONBLE SRI JUSTICE CHALLA KODANDA RAM
I.T.T.A.No. 249 of 2003

JUDGMENT: (Per LNR,J)

The Revenue filed this appeal under Section 260-A of the Income Tax Act, 1961 (for short the Act) feeling aggrieved by the order dated 09.04.2003 passed by the Visakhapatnam Bench of the Income Tax Appellate Tribunal in I.T.A.No.20/V/2002.

The respondent was a partnership firm undertaking the activity of manufacture of aluminium conductors and was assessed to tax. For the assessment year 1987-88, the authorities of the Central Excise Department levied excise duty of Rs.45,09,366/-. The respondent claimed exemption in respect of the said amount under the Act, as expenditure for the assessment year 1982-83. The same was allowed by the Assessing Officer. The activity of the respondent was taken over by M/s.Anam Machinery Fabricators (P) Limited, Kadiam with effect from 01.04.1984.

After the business activity of the respondent ceased, and it was taken over by M/s.Anam Machinery Fabricators (P) Limited, this Court allowed the writ petition filed by the respondent challenging the levy of excise duty. On the basis of that, the amount was refunded. On coming to know the fact that the amount of Rs.45,09,366/- which was exempted in the assessment year 1982-83 was refunded, the Assessing Officer

initiated steps against M/s.Anam Machinery Fabricators (P) Limited and an order of assessment was passed vis--vis the said amount. The company filed an appeal before the Commissioner of Income tax. The same was allowed on 15.04.1997, holding that the liability to pay income tax on the said amount if at all would be upon the respondent-firm or its erstwhile partners and not on the company.

On a direction issued by the Assessing Officer, a notice, dated 31.03.1998 was affixed on the premises, where the respondent carried its activity, before it was taken over by the company. On coming to know that the proceedings are initiated against them under Section 148 of the Act, two partners of the respondent-firm are said to have submitted a representation dated 11.02.2000 before the Assessing Officer, pointing out the defect in the notice as well as the method of service. Ultimately, the Assessing Officer passed order dated 15.03.2000 levying tax upon the amount of Rs.45,09,366/-.

The respondent filed an appeal before the Commissioner of Income Tax (Appeals), Rajahmundry, feeling aggrieved by the order of assessment. The appeal was dismissed on 06.12.2001. Thereupon, the respondent filed I.T.A.No.21/V/2002. Through its order, dated 09.04.2003, the Tribunal took the view that there was serious defect in the very service of notice, dated 31.03.1998 and the order of assessment is vitiated.

Sri S.R.Ashok, learned senior Standing Counsel for the Department submits that assuming that there was any procedural lapse in the service of notice, dated 31.03.1998, the same stood cured, once the partners of the respondent-firm appeared through their representations in February 2000. He contends that the Tribunal has taken hypertechincal view of the matter and that in turn resulted in a substantial amount, representing the income of the respondent, escaping the income tax. He contends that soon after the writ petition filed by the respondent was allowed, steps were initiated against the company, which took over the business of the respondent and it was only in the year 1997, it emerged that the steps for levy of tax must be initiated against the respondent and accordingly they were taken. Learned senior counsel contends that the order passed by the Tribunal cannot be sustained in law.

Smt. K.Neeraja, learned counsel for the respondent on the other hand submits that the business activity of the respondent-firm ceased from 01.04.1984 and the firm itself was dissolved in

the year 1992 and every step taken by the Assessing Officer was contrary to law. She contends that the dissolution of the firm was very much in the knowledge of the Department and in case, there existed any necessity for recovery of any amount referable to the firm, that could have been done only by serving notice on the partners and not otherwise. She further submits that the partners of the firm were individual assessees and they submitted returns as late as on 29.12.1997 and 28.01.1998 and still notice, dated 31.03.1998 was pasted on the premises of a company, which has no relation whatever with the firm much less the partners. She contends that with the expiry of the limitation, valuable rights accrue to the concerned parties and the Assessing Officer did not take any of these provisions into account.

A few undisputed facts need to be taken note of. The first is that the business activity of the respondent i.e., manufacture of aluminium conductors was taken over by the company with effect from 01.04.1984. The second is that the respondent-firm stood dissolved in the year 1992. The third is that a sum of Rs.45,09,366/- was claimed as expenditure for the assessment year 1982-83 by the respondent and the same was allowed. The fourth is that the said amount represented the excise duty and in a writ petition, this Court held that levy of that amount as excise duty is impermissible in law.

On the basis of the facts referred to above, the Assessing officer could have certainly brought the amount under tax, once it was held that the respondent was not liable to pay excise duty representing that amount. Even if the respondent did not exist, the Assessing Officer could have proceeded against the partners, duly serving notices upon them. It was not even the case of the Department that it is not aware of the factum of dissolution of the firm or taking over of the business, by the company. Still, it has chosen to proceed against the company. To bring the amount of Rs.45,09,366/- under tax, though the Assessing Officer passed an order in that behalf, the Commissioner has rightly taken the view that the obligation to pay tax, if at all, would be on the respondent and its partners. Obviously, realising the mistake, the Department did not even carry the order passed by the Commissioner, in appeal.

The Assessing Officer was very much aware that any proceedings in this behalf must be taken before 31.03.1998. He had almost one year time from the date i.e., 15.04.1997, on which the Commissioner allowed the appeal filed by the

company. However, a notice dated 31.03.1998 i.e., last date, was affixed on the premises, where M/s.Anam Machinery Fabricators (P) Limited was undertaking its activity. Even from the order of assessment, it is clear that the representative of M/s.Anam Machinery Fabricators (P) Limited has informed the Department that no firm with the name of Godavari Electrical Conductors is in existence, atleast since 1994 and the notice was pasted on a wrong address. Still, no steps whatever were taken. It appears to have been realised that after 31.03.1998, fresh notice cannot be served upon any person whatever.

It would have been certainly difficult for the Department to trace the partners of a firm dissolved in the year 1992, if their whereabouts are not known. In the instant case, however, two partners of the firm are assesses in the same unit and they submitted their returns on 29.12.1997 and 28.01.998 i.e., much after the order, dated 15.04.1997 was passed by the Commissioner. Still, efforts were not made to serve notices upon those two assessees, before the expiry of the limitation.

Before the Assessing Officer, two partners of the respondent-firm appeared and submitted representations on 11.02.2000, pointing out the serious defect in the proceedings. However, he brushed aside them with some reasoning of his own. The Tribunal took note of the fact that (a) the issuance of a notice straight away through affixture is not proper; (b) no efforts were made to send the notices to the partners through registered post with acknowledge due; and (c) even in the matter of affixture of notices, two defects have crept in viz., (i) affixture was on a totally incorrect premises; and (ii) the procedure prescribed for affixture was i.e., taking signature of two persons living in the locality, was not followed. The appellant has no answer for all these defects pointed out by the Tribunal.

The limitation has its own important role to play in the proceedings, that are initiated under the relevant enactments. In case of limitation for institution of the original proceedings, the repercussions are serious enough and if it is about the filing of the appeals, they are relatively less serious. Either way, with the expiry of limitation, valuable rights accrue to the opposite party. For instance, if a person has lent money to another, and failed to institute any proceedings to recover the same, for a period of three years, his right to recover the amount stands taken away, not withstanding the fact that there is no denial of the fact that the amount has been lent and the other person is under obligation to repay. By the same analogy, if the Department was

under obligation to initiate proceedings within a stipulated time, on expiry of the same, the assessee gets a valuable right, in this behalf. The rigour in this regard may be less, if it is a case of expiry of limitation for filing appeals, particularly where there exists a facility for condonation of delay. The Tribunal discussed the matter at length with reference to the settled principle of law and has arrived at a correct conclusion. We do not find any question of law or basis to interfere with the order passed by the Tribunal.

The I.T.T.A. is accordingly dismissed.

The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

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CHALLA KODANDA RAM, J

Date: 29.10.2014