
(2006) 200 CTR 71 : (2006) 282 ITR 536 : (2006) 152 TAXMAN 129

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No"s. 811, 812 and 820 of 1993

Atul Traders

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: July 14, 2005

Acts Referred:

Income Tax Act, 1961 " Section 148, 149, 150, 153, 153(3)

Citation: (2006) 200 CTR 71 : (2006) 282 ITR 536 : (2006) 152 TAXMAN 129

Hon'ble Judges: B.B. Agarwal, J; A.K. Yog, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. M/s Atul Traders, petitioner, in the above noted three writ petitions, is a registered partnership firm engaged in the business of sale of Dhan

Bhoosi and filed returns for the asst. yrs. 1978-79, 1979-80 and 1982-83 under the IT Act. Books of account maintained in normal course of

business were also produced showing certain loan taken from one, J.P. Bajpayee (Karta of HUF) and also payment of interest accrued thereon.

Assessment orders were passed by the concerned AO.

2. M/s Atul Traders, being aggrieved, challenged the above assessment orders by means of appeal No. CIT(A)/6/Etawah/1989-90 pertaining to

the asst. yr. 1978-79 decided by the CIT(A) on 3rd March, 1992 (Annex. "5" to the Writ Petn. No. 812 of 1993). Against assessment order of

year 1982-83, M/s Atul Industrial Corporation filed appeal No. CIT(A)/5/Ward-I/Etawah/1989-90 before CIT(A), Agra, which has been

decided by means of the impugned order dt. 3rd March, 1991 (Annex. "5" to the Writ Petn. No. 820 of 1993). Another order of AO pertaining

to the asst. yr. 1982-83 was challenged by M/s Atul Industrial Corporation by filing appeal No. CIT(A)/5/Ward-I/Etawah/1989-90, which had

been decided by means of the impugned order dt. 3rd March, 1992 (Annex. "5" to the Writ Petn. No. 811 of 1993).

3. CIT(A), Agra, in the aforesaid impugned orders noted that both "M/s Atul Traders" and "M/s Atul Industrial Corporation" were sister-concerns

and there were cross-entries in their account books, including the entries referable to above mentioned J.P. Bajpayee (HUF), Etawah.

It is borne out from the perusal of the impugned orders dt. 3rd March, 1992 passed by CIT(A), that while assessing the material on record,

appellate authority found cross-entries relating to M/s Atul Traders, M/s Atul Industrial Corporation (P) Ltd., Etawah and J.P. Bajpayee, HUF,

which, in his opinion, attracted provisions of Section 150/251 of the IT Act (called ""Act"") and directed the AO to initiate proceedings for

reassessment u/s 148 read with Section 149 of the Act.

4. In the appellate order relating to the asst. yr. 1978-79 challenged in Writ Petn. No. 812 of 1993, CIT(A) observed.... AO would be free to

take appropriate action in the case of the appellant in 1977-78 However, in para 10 of the said impugned order the CIT(A) had while

concluding its order observed :

...Reduction allowed... with directions for action u/s 150/251 as per this order as well as order of even date in asst. yr. 1982-83....

In para 31 of the impugned order dt. 3rd March, 1992 pertaining to asst. yr. 1982-83, CIT(A) had given categorical direction for taking action u/s

150/251 of the Act to the AO. While discussing the account books/entries, the CIT(A) observed : ...AO is directed to take action by resorting to

Section 150.... Similar is the position with regard to the impugned order dt. 3rd March, 1992 pertaining to the asst. yr. 1979-80.

5. From the perusal of the impugned orders dt. 3rd March, 1992, in all the three writ petitions, it is evident that expression "free", in the

penultimate paragraph has been used only in the order pertaining to asst. yr. 1979-80, but in the concluding paragraph, the CIT(A) has given a

direction in unequivocal terms requiring the AO to initiate proceedings for reassessment.

6. Learned counsel for the petitioner relies upon the observations made by the apex Court in the case of Rajinder Nath and Others Vs.

Commissioner of Income Tax , Delhi, , which reads :

...It is also not possible to say that the order of AAC contains a direction that the excess should be assessed in the hands of the co-owners. What

is a "direction" for the purposes of Section 153(3)(ii) of the Act has already been discussed. In any event, whatever else it may amount to, on its

very terms the observation that the ITO "is free to take action" to assess the excess in the hands of co-owners cannot be described as a

"direction". A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion

of the ITO whether or not to take action, it cannot, in our opinion, be described as a direction.

On the basis of the above quoted passage an attempt is being made to argue that the word "free" in one of the impugned orders (referred to

above), shows that there is no concluded direction as such u/s 153(3) read with Expln. 3(ii) of the Act.

7. We are unable to accept the aforesaid contention made on behalf of the learned Counsel for the petitioner for more than one reason. The word

"free" has been used only in one of the three orders. And that too the passage where such expression is used is followed by another concluding

paragraph where no such expression has been used. The order is to be read as a whole and we cannot ignore a clear-cut direction for initiating the

assessment proceedings as contemplated u/s 150 of the Act. Word "free" is not to be found in other impugned orders challenged in Writ Petn.

Nos. 820 of 1993 and 811 of 1993. The argument of the petitioner on this score is thus not available to the petitioner with respect to the order of

the CIT(A), dt. 3rd March, 1993, pertaining to asst. yrs. 1982-83 and 1979-80 and challenged in Writ Petn. Nos. 820 of 1993 and 811 of 1993.

8. The second submission made by the learned Counsel for the petitioner is that the impugned orders dt. 3rd March, 1992 are bad and per se

illegal in view of the fact that M/s Atul Traders in the appeals relating to the asst. yrs. 1979-80 and 1982-83 were not provided an opportunity of

being heard by the CIT(A). The argument is that the appeals with regard to those assessment years were filed by and on behalf of M/s Atul

Industrial Corporation, which happened to be a distinct/separate entity vis-a-vis M/s Atul Traders. In support of his contention he has relied upon

the decision reported in the case of Rani Rajendra Kumari Ba Vs. Income Tax Officer, B-Ward, and Anr. decision of this Court reported in Gupta

Traders Vs. Commissioner of Income Tax, .

9. There is no dispute over the ratio laid down in the aforesaid decisions of this Court. We also do not propose to hold that M/s Atul Traders and

M/s Atul Industrial Corporation are one entity/juristic person. No such submission has either been raised on behalf of the respondents. The

contention of the respondent on this point is that M/s Atul Traders was not required to be given separate notice for affording opportunity of hearing

u/s 153(3), Expln. 3, as that would have been a mere empty formality.

10. Explanation 3 of Section 153 reads : ...provided such other person was given an opportunity of being heard before the said order was

passed."" Obviously, words "before the said order was passed" refer to the order proposed to be passed by the appellate authority.

11. Record of the three writ petitions shows that it was M/s Atul Industrial Corporation, Etawah, which was appellant before appellate authority in

the proceedings relating to the asst. yrs. 1979-80 and 1982-83 (giving rise to Writ Petn. Nos. 820 of 1993 and 811 of 1993). Those appellate

orders have not been challenged by M/s Atul Industrial Corporation. It is M/s Atul Traders, who has filed these writ petitions. Explanation 3 to

Section 153 of the Act contemplates that before passing orders directing AO to initiate reassessment proceedings, the aggrieved/affected party

should be given an opportunity of hearing. That expression does not mean that such person/party should be formally impleaded or formal notice

must be given. Object is that concerned person be given opportunity to show why such order be not passed. In the present case, M/s Atul Traders

was present before the CIT(A) and the account books/record and other material were all common which were being considered by the said

CIT(A) in the proceedings relating to three appeals. We are satisfied that the petitioner had notice and opportunity of being heard.

12. Learned counsel for the petitioner in support of his contention referred to the case of A.B. Parikh Vs. Income Tax Officer, . In the aforesaid

decision, the learned single Judge has taken the view that when the entity in question are independent legal/juristic person, then notice should be

given under Expln. 3 of Section 153 of the Act. Relevant portion of the judgment reads :

...The intendment of the Expln. 3 to Section 153 when it says "such other person was given an opportunity of being heard before the said order

was passed" is apparent. The person concerned must be put on notice that the consequence of the income being held as his is likely to follow in the

proceedings prosecuted. Furthermore, he must be given an opportunity of being heard on that question....

13. Object of giving notice is to inform a "person" concerned with the matter. If a person receives information/notice by any source and thus had

opportunity of defending him, then the mere fact that notice as per statutory provision, or in a particular mode prescribed under law, has not been

given, will not vitiate the action/decision for the reason that purpose of giving notice was achieved and no prejudice is caused to the concerned

(person) on this score. In this connection reference may be made to a Full Bench decision of this Court in Gyan Singh Vs. The District Magistrate,

Bijnor and Others, .

14. In the instant case, however, the question of sending notice or its mode is not relevant since M/s Atul Traders was also appellant in one of the

connected appeals, which was being heard with other appeals of M/s Atul Industrial Corporation. The submission of the learned Counsel for the

petitioner on this score cannot be sustained and fails.

Writ petitions have no merit and deserve to be dismissed.

In the result, the writ petitions fail and are accordingly dismissed. There shall be no order as to costs.