

(1983) 02 AHC CK 0019

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 265 of 1979

Hira Lal and Sons

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: Feb. 14, 1983

Acts Referred:

- Income Tax Act, 1961 - Section 226

Citation: (1983) 37 CTR 34 : (1985) 156 ITR 30 : (1983) 15 TAXMAN 337

Hon'ble Judges: V.K. Mehrotra, J; R.M. Sahai, J

Bench: Division Bench

Advocate: D.C. Chaturvedi, for the Appellant; M. Katju, for the Respondent

Final Decision: Allowed

Judgement

Mehrotra, J.

By this petition under Article 226 of the Constitution, M/s. Hiralal and Sons, a firm registered under the I.T. Act, 1961, has assailed an order dated March 20, 1979 (annexure "I" to the writ petition), in so far as it related to an adjustment of Rs. 2,02,931 towards the alleged tax liability of one Hiralal Mithal (in his individual capacity) who was, at one time, a partner of the petitioner from the amount due to the petitioner as refund.

2. It is not in dispute that Hiralal Mithal was a partner of M/s. Hiralal and Sons until his retirement therefrom w.e.f. July 5, 1977, It is also not in dispute that the deed of partnership dated April 1, 1962, under which Hiralal Mithal was a partner of firm, M/s, Hiralal and Sons, was substituted by a fresh deed by which a new partnership firm came into existence w.e.f. July 9, 1977. The case of the petitioner is that no adjustment of any tax liability of Hiralal Mithal could be made by the I.T. Department from any amount which was due to the partnership firm of which he ceased to be a partner. The case also is that, in fact, some amount due by Hiralal Mithal had earlier been adjusted by the department from out of the funds of the partnership.

3. The stand of the respondents is that the refund was in respect of assessment for the years during which Hiralal Mithal was admittedly a partner and that it was open to the department, therefore, to adjust part of the amount of refund against the Income Tax liabilities of Hiralal Mithal. It has been suggested that the petitioner firm could be required to pay to the I.T. Department dues of Hiralal Mithal by recourse to the provisions contained in Sections 182(4) and 226(3) of the I.T. Act in particular. It has further been said that a notice u/s 226(3) of the Act was actually served upon the firm in the year 1976 and the order impugned in the present writ petition could validly have followed such a notice.

4. It is not necessary for us, in the view that we are taking, to notice the rival contentions or the facts, brought by the petitioner and the respondents on the record of the writ petition in the form of affidavits, in detail. Suffice it to mention that the notice u/s 226(3) of the Act, of which a copy has been appended as annexure to the supplementary counter-affidavit, was served upon the firm in the year 1976 while the amount which has now been adjusted through the impugned order became due for refund by virtue of an order passed by the I.T. Tribunal in the year 1978. In a supplementary rejoinder affidavit filed on behalf of the petitioner, detailed explanation has been offered in regard to the claim of the petitioner that the demand made through the notice issued to the petitioner firm in the year 1976 u/s 226(3) of the Act has been fully adjusted. It has also been mentioned that at the time when the adjustment from the amount of the refund allowed to the petitioner by the Tribunal was made, the petitioner firm did not owe anything to Hiralal Mithal so that no amount could have been adjusted out of the amount of refund towards the tax liabilities of Hiralal Mithal even on the assumption that the firm could be asked to discharge the liabilities of Hiralal Mithal on the presumption that the amount of refund related to a period when Hiralal Mithal was a partner of the firm-Proceedings for adjusting an amount towards tax liability under the Act, out of any sum due to an assessee by way of refund, are quasi-judicial in nature. Without anything more, therefore, the assessee is entitled, on principles of natural justice, to a reasonable notice to place his version before the authority before an order of adjustment is finally passed. From the facts noticed earlier and those asserted in the affidavits exchanged between the parties, it is amply borne out that before the impugned order of adjustment was passed, no opportunity was afforded to the petitioner firm to have its say in the matter. It is obvious that the petitioner can legitimately urge that prejudice has been caused to it and that in case an opportunity was afforded to it, it would have succeeded in satisfying the respondents that no amount, from out of the amount which became due for refund to it in pursuance of the order of the Tribunal, could be adjusted towards any tax liability of Hiralal Mithal. The petitioner's grievance in this respect is well founded. It is, therefore, necessary to quash that part of the impugned order which contains an adjustment of a sum of Rs. 2,02,931 from out of the sum of Rs. 4,44,600.97 refundable to the petitioner towards the tax liabilities of Hiralal Mithal in his capacity

as an individual assessee. The matter deserves to be left to be redetermined, if the respondents so desire, after notice to the petitioner firm.

5. In conclusion, the petition succeeds and is allowed. The order of the ITO, circle I(2), Meerut, dated March 20, 1979 (annexure "I" to the petition), in so far as it relates to the adjustment of the aforesaid sum of Rs. 2,02,938 towards the tax liabilities of Hiralal Mithal is quashed. The petitioner shall be entitled to its costs.