(2000) 10 MP CK 0048

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 181 of 1989

Princess Usha Trust		APPELLANT
	Vs	
Income Tax Officer and Others		RESPONDENT

Date of Decision: Oct. 9, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Income Tax Act, 1961 - Section 156, 220, 220(2), 245, 246

Citation: (2001) 247 ITR 546 : (2001) 114 TAXMAN 529

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: Kochatta, for the Appellant; R.L. Jain, for the Respondent

Judgement

A.M. Sapre, J.
By this petition filed under articles 226 and 227 of the Constitution of India, the petitioner, an assessee under the Income Tax Act, 1961, claims the following reliefs for the assessment years 1973-74 and 1974-75:

"An appropriate writ, direction or order be issued against respondents Nos. 1, 2 and 4 directing them to delete interest amounting to Rs. 1,04,471 for the assessment year 1973-74 and Rs. 2,56,623 for the assessment year 1974-75 ;

(b) Respondents Nos. 2 and 4 be restrained by an appropriate writ, direction or order from levying interest u/s 220(2) of the Income Tax Act, wherever refund is already due to the petitioner under any other Act if the demand is posterior to such refunds."

2. In short the petitioner claimed that the demand of interest made by the Income Tax Officer amounting to Rs. 1,04,471 for the year 1973-74 and Rs. 2,56,625 for the assessment year 1974-75, be either deleted or it be adjusted against the huge refund which he has to claim from the Department in the estate duty case under the

Estate Duty Act (since repealed) wherein the petitioner was assessed as an accountable person in the case of one deceased--H. H. Maharaja Yashwant Rao Holkar.

3. It may be mentioned that the need to levy interest arose because the assessee (petitioner) failed to pay certain demands for these two years. The demand for interest was raised u/s 220(2) of the Act. This imposition was assailed by the petitioner in appeal to the Commissioner (Appeals). This appeal was dismissed on the ground that no appeal lay against such imposition. In further appeal to the Tribunal, the same was dismissed by, upholding the order of Commissioner (Appeals). The petitioner then sought reference to this court being M. C. C. No. 253 of 1985 u/s 256(1) of the Act. Even the reference was answered against the petitioner, on September 22, 1988. While answering the reference against the petitioner, this court held as follows. It is reported in Princess Usha Trust Vs. Commissioner of Income Tax, :

"Learned counsel for the assessee was unable to point out any provision of law, under which the amount, if any, refundable to the assessee under any other Act, could be set off against the amount of tax payable by the assessee under the Act. It was not disputed that the provisions of section 245 of the Act were not attracted. Section 220(2) of the Act provides that if the amount specified in the notice of demand u/s 156 is not paid within 35 days of the service of notice, the assessee shall be liable to pay interest. The levy of interest, in the instant case, was under the provisions of Sub-section (2) of Section 220 of the Act. The decision in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, , is distinguishable on the facts. In the instant case, the levy of interest was not a part of the process of assessment. By denying liability to pay interest u/s 220(2) of the Act, the assessee cannot be held to be denying its liability to be assessed under the Act. Section 246(c) of the Act was, therefore, not attracted. The Tribunal was, therefore, justified in holding that, on the facts and in the circumstances of the case, the assessee had no right to prefer an appeal from the order levying interest under the provisions of Section 220(2) of the Act.

For all these reasons, our answer to the question referred to this court is in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference."

4. It is after the decision of the reference, the petitioner instead of pursuing the matter further to the Supreme Court filed the present petition and prayed for the same relief which they were claiming in reference proceedings. During the pendency of the petition, the petitioner sought time to make an application to the concerned Assessing Officer praying for the same relief. However, this application was rejected by the Assessing Officer vide his intimation dated May 6, 1999 (annexure A), to the return filed by the Department.

5. Heard, Shri Kochatta, learned counsel for the petitioner, and Shri R. L. Jain, learned counsel for the respondents.

6. Having heard learned counsel for the parties, I have come to the conclusion that the petition has no merit and hence deserves dismissal. In my opinion, this issue was already raised and gone into at the instance of the petitioner in the earlier round of litigation referred to supra and the same attained finality in the reference. The petitioner cannot now urge the same ground by filing a writ and assail the demand of interest levied by the Assessing Officer. This court while answering the reference expressly examined this issue in the aforequoted para, and negatived the plea on its merits. Though the said plea was examined in the context of the issue whether in a case of levy of interest, an appeal lay or not but the fact remains that the plea did arise out of the issue and was expressly gone into and decided against the petitioner. It is an admitted fact that the same arose in the same assessment year for which the present petition is filed.

7. In my opinion, the issue sought to be urged has attained finality in reference proceedings and the same cannot be now again examined nor it can be allowed to be reagitated in the writ petition. Even otherwise, the issue sought to be urged has no substance. It has been expressly dealt with and answered against the petitioner by this" court while answering the reference. It was held by this court that in the absence of any provision of law under which the amount, if any, refundable to the assessee under any other Act could be set off against the amount of tax payable by the assessee under the Act, no orders could be passed for adjustment. In my opinion, the same reasoning applies to repel the submission urged in this writ.

8. In view of the aforesaid discussion, I do not find any merit in the writ. It is accordingly dismissed.

9. No costs.