IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1517 of 2022 (O&M)
Date of decision: 11.05.2023

M/s DLF Projects Ltd.

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari quashing the order dated 03.02.2020 (Annexure P-4) passed by the Revisional Authority-respondent No.2 and order dated 31.12.2021 (Annexure P-5) along with tax demand notice dated 31.12.2021 (Annexure P-6) passed by the Excise and Taxation Officer-respondent No.3 being without jurisdiction as there was no direction by the revisional authority to levy interest.

For the assessment year 2010-2011, the petitioner had filed its quarterly returns in Form R-1. The assessment was framed by respondent No.3 vide order dated 03.02.2014 (Annexure P-1) calculating an excess of Rs.4,49,68,315/-. Thereafter, while exercising the revisional power, notice dated 13.09.2019 (Annexure P-2) for revising the assessment order dated

03.02.2014, was issued to the petitioner under Section 34 of the Haryana Vat Act, 2003 (for short 'the Act').

As per Section 34 of the Act, no order shall be revised after the expiry of period of six years from the date of supply of the copy of such order to assessee, except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

In the present case, the petitioner was required to maintain the books of accounts till 31.03.2019 and notice for revising the assessment order was issued on 13.09.2019 (Annexure P-2) i.e. after expiry of eight years from the relevant assessment year i.e. 2010-2011. The order dated 03.02.2020 (Annexure P-4) was communicated to the petitioner on 29.12.2021.

Vide order dated 23.01.2023 passed by this Court, respondent-State was directed to file reply clarifying as to how the impugned order has been passed without books of accounts. In compliance with the said order, written statement dated 25.04.2022 has been filed by the Excise & Taxation Officer, Gurugram stating that on examination of the assessment order dated 03.02.2014, some illegalities and improprieties were noticed by respondent No.2 and in this backdrop, a show cause notice dated 13.09.2019 (Annexure P-2) for revising the assessment order dated 03.02.2014 (Annexure P-1) was issued under Section 34 of the Act and Section 9 (2) of the Central Sales Tax Act, 1956 read with Section 34 of the Act. In response to the said show cause notice, Sh. Neeraj Jain, authorized signatory of the petitioner-company, appeared and gave his reply, wherein he had agitated the notice on two grounds; firstly, that the petitioner company had received the notice of revision after expiry of more than eight years from the close of the financial year, for which, it was proposed to revise the assessment and secondly, that the findings given in the notice were purely of facts and the respondents were required to produce some evidence or documents/details to justify their claim. As per Section 14 (2) and Section 29 (1) of the Act, the company was not liable to preserve the account books after expiry of eight years from the close of the year.

In the written statement, it is further stated that the revisional order was passed within six years as per the amendment made by the Government of Haryana in Section 34 (1) of the Act and vide notification dated 03.08.2015. The assessment order was passed on 03.02.2014 and the impugned revisional order has been passed within limitation on 03.02.2020 creating a demand of Rs.6,16,08,966/-

A separate order dated 31.12.2021 has been passed for imposing the interest by the Excise and Taxation Officer, Gurugram (East)-respondent No.3, which is appealable before the Joint Excise and Taxation Commissioner (Appeals) under Section 33 of the Act. Since the petitioner has alternative remedy of filing the appeal, it cannot invoke the extraordinary jurisdiction of the High Court. Reference has been made to the judgments passed in ***Chanan Singh & Sons vs. CCE,*** (1999) 9 SCC 17; ***M/s Kerla State Electricity Board vs. Kuman E.Kalathil,*** (2000) 6 SCC 293 and ***Indian Technomac Company Limited vs. State of HP,*** (2015) 50 PHT 454 (HP). In the written statement, it is admitted that the order dated 03.02.2020 (Annexure P-4) was communicated to the petitioner on 29.12.2021. However, the order was passed by the revisional authority on 03.02.2020. It is further stated that the excess of Rs.4,49,68,315/- allowed by the Excise & Taxation Officer-respondent No.3 has been carried forward in next assessment years. The demand of Rs.6,16,08,966/- each, as per the impugned orders dated 03.02.2021 and 31.12.2021, is first adjustable against the excess amount to the year 2017-18 as per the table given by the petitioner-company.

Learned counsel for the petitioner has referred to the information received by the petitioner through Right to Information Act, 2005 i.e. order sheet dated 31.05.2022 (Annexure P-8), stating that the representative of the petitioner-company namely, Mr. Neeraj Jain was present on 03.02.2020 and had reiterated that the company had destroyed the account books after completion of eight years from the closing of assessment year. On the same day, the revisional authority had passed the impugned order. Hence, the present petition. He has referred to the judgment passed by Hon'ble the Supreme Court in ***State of Andhra Pradesh vs. Khetmal Parekh,*** (1994) 93 STC 406 (SC) on the proposition that if, a revisional order has been passed within four years and served upon the assessee after substantial delay without any explanation, then the presumption would be that the order was not made on the date it purported to have been made and could have been made after expiry of four years.

On the other hand, learned counsel for the respondents has argued that the revisional authority had issued a show cause notice dated 13.09.2019 (Annexure P-2) for revising the assessment order dated 03.02.2014 (Annexure P-1), within a period of six years. At that time, no fresh documents were examined by the revisional authority. Accordingly, the final order was passed within limitation i.e. on 03.02.2020. Hence, the revisional order does not suffer from any illegal infirmity. She has further argued that initially, the order was passed on 03.02.2020, but it was served upon the petitioner on 29.12.2021 and this in itself will not be a ground to set aside the revisional order.

Heard, learned counsel for the parties.

The short question for consideration in this petition is, whether the impugned order dated 03.02.2020 (Annexure P-4), which was served upon the petitioner on 29.12.2021 i.e. after 22 months, would render the revisional order without jurisdiction.

This aspect has already been considered by Hon'ble the Supreme Court in ***Khetmal Parekh's*** case (supra). In that case, the Andhra Pradesh High Court had allowed the revision filed by the assessee on the ground that the Deputy Commissioner had passed the said order on 06.01.1973, but it was served on the assessee only on 21.11.1973. The High Court had accepted the submission of the assessee that the order, which was served beyond the period of limitation, could not have been passed before expiry of limitation on 06.01.1973. The order could have been communicated within a reasonable period. The High Court further held that the respondent-assessee was not bound by that order. The Hon'ble Supreme Court dismissed the appeal filed by the State of Andhra Pradesh and held that in the absence of any explanation whatsoever, the Court must presume that the order was not made on the date it purported to have been made. This view has been thereafter, followed subsequently in ***Sanka Agencies vs. Commissioner of Commercial Taxes, Hyderabad,*** (2005) 142 STC 496 (AP); ***Chandrika Sao vs. Sales Tax Officer and another,*** (2015) 81 VST 86 (Ori) and ***Santosh Builder vs. Deputy Commissioner of Commercial Taxes,*** (2013) 57 VST 55 (A.P.).

Reference can also be made to a decision given by Hon'ble the Supreme Court in ***M/s Ajantha Industries & others vs. Central Board of Direct Taxes, New Delhi,*** (1976) 1 SCC 1001, wherein it has been held that non-communication of order is a serious infirmity. The Gujarat High Court in ***Commissioner of Income Tax vs. Dhatu Sanskar P. Ltd.,*** (2007) 292 ITR 135 has held that an order to be considered valid and effective, must be communicated to the person concerned, who is directly affected by that order and non-communication of an order, which is likely to have a detrimental effect upon the person concerned, would not only be arbitrary and, therefore, violative of the principles of natural justice, but would also make the order ineffective and incomplete.

The ratio of the above said judgments is directly applicable to the facts of the present case. In the present case, the assessment order was passed on 03.02.2014 (Annexure P-1) and notice for re-assessment was issued on 13.09.2019 (Annexure P-2). Even though, the final order was passed on 03.02.2020 (Annexure P-4), it was received by the petitioner on 29.12.2021 i.e. after 22 months of passing thereof. In the written statement filed on behalf of the respondents, no explanation has been given, as to why this delay took place and who was responsible for such a long delay in communicating the impugned order to the assessee.

Even if, the representative of the petitioner namely Mr. Neeraj Jain, was present in the office of the respondent-authority on 03.02.2020, it would not be presumed that he had the knowledge of the above said order, which was served upon the petitioner-assessee on 29.12.2021. Moreover, as per Section 14 (2) and Section 29 (1) of the Act, the petitioner-company was not required to preserve the account books after expiry of eight years from the close of the assessment year 2010-2011. As per the judgments, referred to above, even though the impugned order was passed within six years, it was communicated to the petitioner after a gap of 22 months. There is no reasonable explanation, why it was communicated so late. Hence, from all angles, the impugned order(s) passed by the respondent-authority is liable to be set aside as it was beyond the period of limitation.

In view of the above discussion, the present petition is allowed and the impugned orders are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.05.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No