

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A/T.A No 110 1988

(3)

A. D. Makwana. Applicant(s)

Mr. M. R. Anand.

Versus

Union of India & Ors. Respondent(s)

Mr. R. P. Bhatt.

Sr.No.	Date	Orders
	9/12/88	F/H (Dt. changed from 23-12-88 to 9-12-88 due to Note filed by both advocate and guaranteed by Hon'ble Registrar.)
	9-12-88	Dt. changed from 9-12-88 to 16-12-88 due to Hon'ble V.C. on leave
	16-12-88	F/H. dt. changed due to Leave cancelled and fixed as it is i.e. on 9-12-88
	9-12-88	F/H informed by M.B.

OA/110/88



Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman

19/2/1988

Heard Mr. M.R. Anand and Mr. M.R. Bhatt for Mr. R.P. Bhatt learned advocates for the applicant and the respondents. Admit. Interim relief ~~pray~~ for in terms of promotion if any may pending the disposal of the case, will be subject to the result of the case, allowed in this terms. Respondent Issue notice on the respondents to reply within 45 days from the date of this order. The applicant is also free ^{to} file file rejoinder if any within 15 days thereafter. The case be posted on 15th April, 1988 for further direction before Registrar.



(P.H.Trivedi)
Vice Chairman

a.a.bhatt

Shri A.D.Makwana
Income Tax Officer,
Circle III, Ward-B
C.U.Shah Building,
Ashram Road, Ahmedabad.

.. Petitioner

(R)

Versus

Union of India
through the Secretary,
Ministry of Finance,
Central Secretariat,
New Delhi.

Chief Commissioner of Income
Tax (Gujarat) Income Tax Office,
Ashram Road, Ahmedabad.

.. Respondent

ORAL ORDER

9/12/1988

Per: Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Heard Mr.M.R.Anand and Mr.M.R.Bhatt for Mr.R.P.Bhatt learned advocates for the applicant and the respondents. Learned advocate for the petitioner states that as the adverse remarks were in respect of column No.24 which has to be filled up by the reviewing officer and as reviewing officer is the Commissioner of Taxes, the disposal of representation by the Commissioner of Taxes at Annexure A3 dated 8.10.1986 was done by an officer not competent to do so and in the facts and the circumstances of the case it should have been disposed of by the Board. The appeal against the decision disposing of the representation dated 8.10.1986 was considered by the Govt. and rejected by order dated 13/7/1987 at Annexure5. Learned advocate for the petitioner states that the mere rejection of the appeal by the Govt. does not mean that his representation was considered by higher authority than the Commissioner because the appeal was considered and was turned down it cannot be ruled out that all the pleas made in the representation were not considered by the Govt. when it turned down the appeal. Learned advocate for the petitioner cites the judgments : (1) State of Haryana v/s.P.C.Wadhwa AIR 87 SC 1201, (2) 1988 (3) SCC page 370 para 4, 13 & 14, (3) 1988 (3) SCC page 764 to show that the question

of competence of the officer who decides the representation is related to the question of the basis of the adverse remarks which also arises and the above judgments clearly show that without basis merely formation of opinion would not constitute sufficient material for the adverse remarks. Learned advocate for the respondent states that he has information of the remarks recorded and reviewed which he has brought in sealed cover on which he want to show that there is factual basis for such adverse remarks. At this stage, the narrow question of whether the petitioner was unfairly dealt with by the reviewing officer disposing of the representation has to be decided upon. It is clear that in this case the adverse remarks against in column 24 which has admittedly been recorded by the Commissioner of Taxes. It is therefore necessary in accordance with the rules and also principle of justice that any representation against such adverse remarks should be disposed of by a higher authority. The higher authority in doing so will have the opportunity to consider the pleas and contentions made in the representation among which presumably that there has been no basis for the adverse remarks communicated. In this case purusing Annexure A3 the same authority which reviewed and recorded the remarks in column 24 has disposed of the representation. Although the appeal against such order is found to have been rejected by the Government, there is force in the contention of the petitioner that the higher authority should dispose of the representation and not Commissioner of Income Tax. Learned advocate for the respondent's plea is that the material in the sealed cover shows that there was factual basis for recording of the adverse remarks. At this stage this question is better appreciated by the higher authority which should be asked to dispose of the representation.

(4)

It is therefore found in the facts and the circumstance of this case that it would be adequate and proper to make the following order.

To the authority which is empowered and which is higher than the Commissioner of Income Tax is remitted the case to dispose of the representation made by the petitioner against impugned communication of adverse remarks and in doing so the principles laid down in the judgments cited to the extent applicable be borne in mind by the respondent authorities. We direct that the orders disposing of the representation by the competent authority be passed within three months of the date of this order. The adverse remarks communicated to the petitioner be not taken into account until the disposal of the representation. With this observation and direction the case is disposed of.

Phirri
(P.H.Trivedi)
Vice Chairman

a.a.bhatt