
(1967) 03 MAD CK 0072

In the Madras High Court

Case No : Writ Petitions No's. 1399 to 1401 of 1963

A.E.M. Usoof

APPELLANT

Vs

Income Tax Officer, Tuticorin, and Another

RESPONDENT

Date of Decision : 10-03-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 45

Citation : (1968) 67 ITR 49

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—These writ petitions are filed under article 226 of the Constitution of India for the issue of appropriate writs. Writ Petition No. 1399 of 1963 is for the issue of a writ of certiorari or any other appropriate writs. Writ Petition No. 1399 of 1963 is for the issue of a writ of certiorari or any other appropriate writ to quash the order of attachment dated August 31, 1963, issued by the second respondent. Writ Petition No. 1400 of 1963 is a similar writ to quash the order of attachment dated September 29, 1963, issued by the second respondent. Writ Petition No. 1401 of 1963 is for the issue of a writ of certiorari or any other appropriate writ to quash the proclamation of sale dated October 14, 1963, issued by the second respondent. The first respondent in all these cases is the Income Tax Officer, Tuticorin.

2. The facts in these petitions are not in dispute. The petitioner in the status of a "resident and ordinarily resident" was subject to tax of about Rs. 12,36,537 in respect of his foreign income in Ceylon for the years 1943-44 to 1956-57. The relative orders of assessments having become final, the departmental authorities started recovery proceedings and attached certain properties in India said to belong to the petitioner. Pursuant to such coercive processes initiated, the properties attached were sought to be brought to sale and necessary proclamations were issued. At this stage the petitioner has come to this court with the above writ petitions on the ground that the laws of Ceylon prohibit or

restrict the remittance of money to India and by reason of such prohibition or restriction, funds cannot be brought into the taxable territories and that he cannot, therefore, be treated as a defaulter and that he is entitled to the benefit of the second proviso to section 45 of the Indian Income Tax Act, 1922. Section 45 of the Act runs as follows :

45. Tax when payable. - Any amount specified as payable in a notice of demand under sub-section (3) of section 23A or u/s 29 or an order u/s 31 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal u/s 30, the Income Tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of :

Provided further that where an assessee has been assessed in respect of income arising outside the taxable territories in a country the laws of which prohibit or restrict the remittance of money to the taxable territories, the Income Tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into the taxable territories, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation - For the purpose of this section income shall be deemed to have been brought into the taxable territories if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee without the taxable territories or if the income whether capitalised or not has been brought into the taxable territories in any form.

3. It is the petitioner's case that he is not a defaulter within the meaning of section 45 of the Act and the revenue, therefore, cannot proceed against the Indian properties for the issue of the usual certificate u/s 46(2). He would say that the prohibition or restriction regarding the remittance of money from Ceylon to India still continues, that he has taken all possible steps to establish the existence of such a prohibition or restriction and that, therefore, the action taken by the respondents in treating him as a defaulter and in attaching the properties in India are illegal or without jurisdiction. The petitioner sought to sustain this contention by producing certain correspondence between himself and the exchange control authorities of Ceylon to show that in spite of his best efforts, bona fide pursued by him, he could not obtain the remittance of funds to satisfy the demands of the revenue. Similar attempts, in vain, were made by the petitioner on three earlier occasions in Writ Petitions Nos. 1021 and 1022 of 1953, 1444 and 1445 of 1956 and 99 of 1961, all of this court. In the above cases the petitioner asked for an interdict against the revenue from taking recovery proceedings on the only ground that remittances of funds from Ceylon

to India were restricted and indeed prohibited. All such writ petitions were dismissed on the ground that the petitioner did not establish that he took bona fide and proper steps to satisfy the revenue as well as this court that he could not obtain sanction for remittance from the authorities in Ceylon. Before us, again, the petitioner referred to the correspondence already relied upon by him and in particular drew our attention to two letters which we shall presently consider. After the judgment in Writ Petition No. 99 of 1961 was rendered on March 4, 1963, the petitioner wrote on October 28, 1963, requesting the exchange control department, Ceylon, for grant of permission to secure the sum of Rs. 12,36,542.59 from Ceylon which, according to him, was payable as tax in India. The Central Bank of Ceylon replied on November 13, 1963, as follows :

Reference your letter dated 28th October, 1963, and to subsequent interviews your attorney had with the undersigned we are unable to consider your application for payment of Indian Income Tax from Ceylon since there is no evidence that you have any income in Ceylon to meet this commitment.

4. It is seen from this reply that the Ceylon authorities expressed their inability to consider the application of the petitioner for payment of Indian Income Tax since there is no evidence that he had any income in Ceylon to meet that commitment. The plain meaning of this letter appears to us to be that there are no assets of the petitioner at Ceylon from which any income has arisen to enable the exchange control authorities to consider the request of the petitioner. This only attempt of the petitioner to secure remittance from Ceylon cannot be characterised to be a bona fide attempt on his part to get the remittance or any part of it. Even so, the reply of the exchange control authorities of Ceylon is laconic. It cannot be inferred with reasonable certainty that the petitioner made sincere attempts in getting such remittance from Ceylon. It is in this context that the revenue rightly contends that the Explanation to section 45 extracted above would apply to the instant case and that the text of the letter dated November 13, 1963, from the exchange control authorities is very much relieving of the fact that the petitioner might have utilised or deemed to have utilised such income for his own purposes and that, therefore, the petitioner cannot press into service section 45 to his benefit or advantage. There is considerable force in this contention. No doubt, it cannot be said that the petitioner is negligent, fraudulent or colluding with the authorities at Ceylon in the matter of the remittance of funds therefrom to India. As pointed out in *Muthuwappa v. First Additional Income Tax Officer* :

If an assessee by negligency, collusion or fraud does not get the permit and, therefore, is not able to remit money to the taxable territory, it cannot be said that his inability to bring money into the said territory is by reason of such prohibition or restriction.

5. Notwithstanding the absence of such telling features like fraud, collusion or negligence, we are not satisfied that the attempts thus far made by the petitioner for repatriation do appear to be complete, full and bona fide. The non-

remittance of the fund into the taxable territory has not been established to be due solely to the prohibition or restriction in the matter of such remittance in Ceylon. If any, a sententious brief attempt has been made by the petitioner after the disposal of Writ Petition No. 99 of 1961 on the file of this court to obtain such remittance and equally the reply of the exchange control authorities is brief and laconic. In our opinion, this by itself would not tantamount to a bona fide attempt on the part of the petitioner to obtain such remittance or to establish that such remittances are prohibited or restricted.

6. We are, therefore, unable to accept the contention of the petitioner that all possible steps have been taken by him so as to enable him to press into service the second proviso to section 45 of the Indian Income Tax Act, 1922, and deem him not as a defaulter and prevent the respondents from taking recovery proceedings in accordance with law. The writ petitions are therefore, dismissed with costs, one set. Counsels fee Rs. 250.

7. The petitioner however, is given yet again an opportunity to establish beyond doubt, within six months from this date that he is perforce prevented by reason of such a prohibition or restriction in the matter of remitting of funds from Ceylon to India for which purpose he can take immediate and necessary steps as required. But the attachment of the properties in India already effected by the revenue shall continue for a period of six months and if no such proof of such prohibition or restriction to the satisfaction of the revenue is established by then, the respondents are at liberty to proceed further with the recovery proceedings by sale of the properties attached already.