(1971) 07 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 1694 Of 1967

A.E.M. Usoof — APPELLANT

Vs

Third Income Tax Officer, Tuticorin and Others — RESPONDENT

Date of Decision : 22-07-1971

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Citation : (1972) 83 ITR 451 : (1972) 4 SCC 420

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Hegde, J.—This appeal by certificate under Article 133(1)(a) of the Constitution is directed against the summary dismissal of the appellant's writ petition by the High Court of Madras. The Third income tax Officer, Tuticorin, had taken steps to realise the tax arrears from the appellant. The appellant resisted the same on the ground that he is entitled to the benefit of the proviso to Section 45 of the income tax Act, 1922. That contention was rejected by the income tax Officer. Thereupon the petitioner moved the High Court of Madras for a writ of prohibition restraining the income tax Officer from proceeding against him. He averred in his writ petition that he made several attempts to remit the tax due from him from Ceylon but the authorities in Ceylon did not permit him to do so. But the High Court even without calling for a return from the respondents summarily dismissed the writ petition observing " we are not satisfied that the petitioner has taken bona fide steps to prosecute the matter in Ceylon. What appears to have happened is that the petitioner merely applied to the Exchange Controller in Ceylon and got an order, a copy of which is produced, which disposes of the matter by stating that the business income in respect of which the Indian tax related accrued in Ceylon and that the petitioner himself is a Ceylon national. The petitioner could have taken further steps, including the moving of the courts thereof for a proper direction to the officer concerned. The petition is dismissed." We do not think that this was a proper way of disposing of the writ petition. If the petitioner's averments in the writ petition are true-we must assume them to be so in the absence of any denial by the opposite side-then there is a case for examination. If those facts are true, then the next question to be considered by the High Court is whether those facts bring the case within the proviso to Section 45.

2. For the reasons mentioned above, we allow this appeal, set aside the order of the High Court and remand the case to the High Court with the direction to admit the writ petition and dispose of the same in accordance with law. No costs.