
(1977) 06 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 241 of 1976

Badrunnessa Khatoon

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 22-06-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 29
Income Tax Act, 1961 — Section 144, 147, 231

Citation : 82 CWN 477 : (1980) 123 ITR 870

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : T.P. Mukherjee and Rahul Das, for the Appellant;Ajit Sengupta, for the Respondent

Judgement

Sabyasachi Mukharji, J.—Nawab Musharaff Hussain had considerable properties. He died in 1966. He died leaving behind him two daughters, namely, the petitioner herein and one Kamrunnessa Khatoon. The said Kamrunnessa Khatoon had died in 1976. According to the petitioner the said Nawab Musharaff Hussain did not leave any property or asset at the time of his death. The wife of Nawab Hussain, Begum Faizunnessa Khatoon, had died in 1962. But the case of the revenue authority is that there was an association of persons consisting of Begum Faizunnessa Khatoon, Nawabjadi Kamrunnessa Khatoon, Nawabjadi Badrunnessa Khatoon, the present petitioner herein, and Nawab Musharaff Hussain. This association of persons, according to the revenue, was assessed to tax for several years. Indeed, they were assessed to tax for 1952-53, 1961-62, 1954-55, 1955-56, 1956-57, 1957-58, 1962-63 and 1966-67. I am, however, not concerned in this application under Article 226 of the Constitution with any attempt for recovery on account of the tax dues for the assessment years 1952-53 and 1961-62. In this application under Article 226 of the Constitution, the petitioner challenges the recovery proceedings in respect of the assessment years 1954-55, 1955-56, 1956-57, 1957-58, 1962-63 and 1966-67.

2. The main grievance of the petitioner was that there was no demand notice served upon the petitioner or upon the assessee for initiating the proceedings for recovery of taxes. It was contended that unless and until an assessee was in default or deemed to be in default, certificate could not be forwarded for the recovery of the demand in respect of any amount. It was further urged in this case that there was no notice of demand served upon the petitioner. In support of the proposition that without service of any demand notice the assessee could not be treated to be in default or deemed to be in default, learned advocate for the petitioner sought reliance on several authorities. In my opinion, this position is well accepted that before the certificate proceedings can be initiated or steps taken for recovery of the dues, there must be notice of demand served. The question, therefore, is whether in the instant case the notice of demand had been served. That, in my opinion, is clear. It appears that for the assessment year 1954-55, the assessment had been made u/s 144 read with Section 147(a) of the I.T. Act and the assessment was made and demand notice was served on the 24th March, 1975, by personal service. The original demand notice was produced before me for the said assessment year and it appears from the said demand notice that it was served by personal service by receipt of the addressee or on behalf of the addressee. For the assessment year 1955-56, similar is the position. For the assessment year 1956-57 also, the position appears to be the same. For the assessment year 1957-58, the position appears to be the same and for the assessment years 1962-63 and 1966-67, the assessment orders were served on the 3rd May, 1975, and these were served by affixation on the refusal of the assessee to accept the service, or failure to find out the assessee. The original returns of the service of notice were produced before me. It appears, therefore, that there has been services of the notice of demand as required by the law before initiation of the proceedings for certificate.

3. Learned advocate for the petitioner, however, drew my attention to certain observations in the case of E. Alfred Vs. First Additional Income Tax Officer, Salem, . He contended that notice of assessment or reassessment must be served on all the legal representatives. I think there is misapprehension in this respect. The petitioner was being proceeded against both as legal representative of some of the members of the association of persons as well as herself being a member of the association of persons. Therefore, she herself was a member of the association of persons and if that association of persons had been served with notice of demand of the assessment, then the fact that subsequently the notice of demand had not been served on all the legal representatives of the other members of the association of persons does not, in my opinion, vitiate the certificate proceedings.

4. In the case of Segu Butchaiah Setty Vs. Income Tax Officer, Kolar Circle and Another, , it has been held that where notices of demand were issued to an unregistered firm or an association of persons u/s 29 of the I.T. Act, 1922, it is unnecessary for the ITO to issue individual notices to the partners of the unregistered firm or members of the association of persons demanding payment

of the amount due under the order of assessment made against the unregistered firm in the one case or in respect of the association of persons in the other and the certificate forwarded to the Collector naming the unregistered firm as the assessee in the one case or the association of persons in the other dispensed with the necessity of forwarding certificates naming the partner of the unregistered firm or the members of the association of persons as the persons from whom recovery should be made.

5. Reliance, however, was placed by learned advocate on the observation of the Supreme Court in the case of First Additional Income Tax Officer, Kozhikode Vs. Susheela Sadanandan and Another, . That was, however, a different case and in view of the observation of the Supreme Court referred to hereinbefore, I am of the opinion, that in this case the certificate proceedings or recovery proceedings cannot be impugned on the ground that all the legal representatives of the deceased members of the association of persons had not been again served with the notice of demand.

6. It was then contended that the ITO who had forwarded the certificates to the TRO was not the officer who had made the impugned assessment. This, again, was under a misapprehension. It appears that the certificates had been forwarded by the ITO (II), Calcutta. But the contention of the petitioner was that the ITO, Central Circle XVII, was the proper ITO. As I mentioned before, this was under a misapprehension. The ITO, Central Circle XVII, was the ITO, who was assessing the petitioner in her individual capacity but the ITO, District (II), Calcutta, was the ITO, who was assessing the association of persons. That ITO, in my opinion, was, therefore, competent to forward the certificates in the manner he had done.

7. It was then contended that there was a period of limitation and the certificates had not been initiated in terms of the period as contemplated u/s 231 of the I.T. Act, 1961, which prohibits commencement of proceedings after the expiry of one year from the last date of the financial year in which the demand was made. But, in this case, from the dates mentioned hereinbefore, it is apparent that demands were made for 1954-55 on 24th March, 1975, and the certificate had been issued on 23rd August, 1975. Similarly, for the year 1955-56, the demand had been made on 24th March, 1975, and the certificate was issued on 23rd August, 1975. For the year 1956-57, the demand had been made on 24th March, 1975, and the certificate was issued on 23rd August, 1975. Similarity, for the year 1957-58, the demand had been made on 24th March, 1975, and the certificate was issued on 23rd August, 1975, and for the year 1962-63, it was well within the time. In that view of the matter, the challenge to the certificate proceedings, in my opinion, made in this application under Article 226 of the Constitution cannot be sustained.

8. There is, however, one aspect of the matter in respect of which, I think, justice of the case requires some direction. It appears that on 19th November, 1975, before initiating the proceeding, the petitioner was written to by the ITO. The case of the petitioner in para. 9 of the petition is that the petitioner received the

letter on 8th December, 1975. I have nothing on record to believe or accept the petitioner's statement. But, giving her the benefit of doubt, in my opinion, the justice of the situation would be met, if I direct that the certificate proceedings will not be proceeded with for a period of four months so far as these relate to the proceedings in respect of premises No. 4, Palm Avenue, Calcutta, and if, in the meantime, the petitioner makes any representation or replies to any of the queries, mentioned in the letter dated 9th November, 1975, which is in annex. " C " to the petition, and if the ITO is satisfied with such replies and representation of the petitioner that the certificate proceedings require to be modified or adjusted or altered the ITO will take such steps. Otherwise, the certificate proceedings will proceed in accordance with the law. This order will, however, not prejudice or preclude any rights of the petitioner to take such objection as the petitioner is entitled to under the law before the TRO.

9. Save as the aforesaid direction, the rule is disposed of. Interim order, if any, is vacated to the extent indicated above. There will, however, be no order as to costs.