

(1957) 09 MAD CK 0038
In the Madras High Court
Case No : Writ Petition No. 698 of 1955

C.M. George, Partner representing Messrs. Cherian Bros,
(now dissolved)

APPELLANT

Vs

Income Tax Officer, Madras, Special Circle, and another

RESPONDENT

Date of Decision : 16-09-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1958 Mad 417

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : R. Kesava Aiyangar, for the Appellant; C.S. Rama Rao Sahib, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The petitioner was liable to be assessed to excess profits tax for the chargeable accounting periods 1-4-1944 to 31-3-1945 and 1-4-1945 to 31-3-1946. On 31-12-1951 the Excess Profits Tax Officer completed his assessment and levied a tax of Rs. 29149-5-0 and Rs. 83580 respectively for the two chargeable accounting periods. Demand notices under S. 29 of the income tax Act were issued to the assessee on, 30-4-1952.

2. The assessee preferred appeals against these assessments. Independently of the appeals, however, the Commissioner exercised his revisional jurisdiction and reduced the tax liability of the petitioner by the order dated 7-1-1954. The tax payable by the assessee with reference to the accounting period 1944-45 was reduced to Rs. 15513-5-0 and that for 1945-46 was reduced to Rs. 31716/-. The total of the taxes due from the assessee thus came to Rs. 47229-5-0.

3. On 13-3-1953 the Excess Profits Tax Officer issued a certificate to the Collector under S. 46(2) of the Act for the recovery of the taxes due. It should be remembered that on that date, though the appeals preferred by the petitioner

were pending the taxes due under the demand notice were those assessed by the Excess Profits Tax Officer. They were much in excess of the tax liability that was ultimately determined on 7-1-1954. After the liability had been revised by the Commissioner on 7-1-1954, the Excess Profits Tax Officer informed the Collector on 13-4-1955 and asked him to revise the figures.

4. On 11-6-1955 the Collector demanded of the petitioner the amount of the taxes so finally revised by the Commissioner which figures had been communicated to the Collector. A notice of demand would also appear to have been issued under the provisions of the Revenue Recovery Act (II of 1864). The petitioner, it should be noted, is a resident of Madras. Section 64 bars the application of the provisions of Act II of 1864 to that class of persons.

5. The petitioner applied under Art. 226 of the Constitution for the issue of a writ of prohibition to restrain the income tax Officer and the Collector of Madras from seeking to recover any portion of Rs. 47229-5-0, which represented the excess profits tax due from the petitioner.

6. The main contention of the petitioner, that recovery of the tax due was barred by limitation was really based upon a misconception, to a considerable extent caused by the averments in the first counter affidavit filed in these proceedings. The counter affidavit disclosed that the certificate issued by the Excess Profits Tax Officer on 13-3-1953 had been misplaced. The learned counsel for the petitioner referred to the terms of Sec. 46(2) of the Act, which ran:

The income tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee and the Collector on receipt of such certificate shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

The learned counsel contended that the burden, lay upon the department not merely to prove that the certificate had been forwarded but that it had also been received by the Collector, and unless both these tests were satisfied, the Collector would have no jurisdiction to recover anything from the assessee. It may not be necessary to examine the soundness of this contention in these proceedings. The department made it clear in its supplementary affidavit that the certificate dated 13-3-1953 had in fact been received by the Collector and was in due course forwarded by the Deputy Tahsildar. No doubt the original certificate itself has been misplaced. But there is certainly proof that the certificate dated 13-3-1953 was in fact received in the office of the Collector of Madras.

7. Section 46(7) no doubt directs:

... no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

The demand was made of the petitioner on 30-4-1952. The certificate dated 13-3-1953 was within the period permitted by S. 46(7) of the Act.

8. The learned counsel for the petitioner urged that, since admittedly the certificate dated 13-3-1953 did not show the correct figure, it was not a valid certificate and was non est in law. I have set out earlier that after the Commissioner revised the assessment on 7-1-1954 the Collector was informed on 13-4-1955 of the revised figure, that is of the amount lawfully due from the petitioner. The learned counsel for the petitioner contended that 13-4-1955 should be taken as the date on which "proceedings were commenced" within the meaning of S. 46(7) of the Act, in which case those proceedings were clearly barred by limitation.

9. That the certificate dated 13-3-1955 was a proceeding for recovery of the tax payable within the meaning of S. 46(7) can admit of no doubt - See also *Arunadevi Jajodia and Others Vs. The Collector of Madras and Others*, .

10. The learned counsel for the petitioner contended that in view of the explanation to S. 46(7) added by the Amending Act of 1953 the principle laid down in *Arunadevi Jajodia's* case (A) should be treated as no longer good law. I am unable to agree. The principle still remains the same. A certificate issued under S. 46(2) is a proceeding to recover a tax due from the assessee.

11. The only other point that remains for consideration is whether the certificate dated 13-3-1953 should be treated as non est in law, because the amount of tax due from the assessee was admittedly less than what was shown in that certificate. The amount was reduced by the order of the Commissioner dated 7-1-1954. Of course it is only the amount as finally revised by the Commissioner, Rs. 47229-5-0, that can be lawfully collected from the assessee. The question however is whether that sum can be collected now on the basis of the certificate issued on 13-3-1963 before the tax liability was reduced by the Commissioner in exercise of the jurisdiction vested in him. It was never the contention of the petitioner that the particulars entered in the certificate issued on 13-3-1953 were not correct and were not in accordance with the orders of assessment in force then. The pendency of the appeal did not affect that correctness.

The orders of the Commissioner were long after, on 7-1-1954. A subsequent reduction lawfully effected of the liability of an assessee to pay a tax cannot, in my opinion, affect the validity of the certificate that was issued under S. 46(2); in this case the certificate issued on 13-3-1953. As I said, it was a proceeding taken to recover the arrears due. The right is to recover the arrears lawfully due. The amount lawfully due is no doubt less than what was originally demanded. But what was originally demanded was in accordance with the order of assessment passed by the Excess Profits Tax Officer. In my opinion, the Collector was entitled to take proceedings on the basis of the certificate dated 13-3-1953, though of course only the amount lawfully due from the petitioner could be recovered on the basis of that certificate.

12. The learned counsel for the respondent referred to *Laduram Taparia Vs. D.K. Ghosh and Others*, , where at p. 114 (of I.T.R.) : (at p. 509 of AIR), *Sinha J.*

observed:

... it is not disputed that the certificate officer has the power to amend the certificate. Thus where the amount of tax due has been scaled down by the appellate authority, I do not see why it is incompetent to amend the certificate, so that proceedings would continue for the realisation of the reduced amount as ordered by the appellate authority. I do not think that in such a case it is necessary to issue a fresh notice, wiping off the entire certificate proceedings had up to that point of time I respectfully agree.

13. I pointed out earlier that the notice of demand was issued by the Collector under the provisions of Madras Act II of 1864. The learned counsel for the petitioner contented that that notice was unenforceable. That was not a point taken by the petitioner in his affidavit, and I need not rest my decision in this case on that feature of the case. It was not the notice of demand issued by the Collector that was really objected to. What the petitioner really wanted was an immunity from payment of the excess profits tax on the ground that the proceedings taken by the Collector to recover that amount as arrear of land revenue were barred by the period of limitation prescribed by S. 46(7) of the Act. That contention must be rejected.

14. The rule is discharged and the petition is dismissed with costs. Counsel's fee Rs. 150.