

(1994) 07 KL CK 0043

In the High Court Of Kerala

Case No : Original Petition No. 9391 of 1994-R

Gajanana Agencies

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 220, 220(6)

Citation : (1994) 210 ITR 865

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : G. Sivarajan, for the Appellant; P.K. Ravindranatha Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

P.A. Mohammed, J.—When this writ petition came up for admission, both sides agreed that this can be disposed of at the admission stage itself.

2. The writ petitioner is a partnership firm doing business in rubber. The dispute involved in this writ petition relates to the assessment under the Income Tax Act for the year 1991-92. Exhibit P-1 in the order of assessment passed against the petitioner and exhibit P-7 series are the consequential orders passed against the partners of the firm. As against exhibit P-1, the petitioner filed an appeal evidenced by exhibit P-2. It has filed exhibit P-3 application before the first respondent, the Income Tax Officer u/s 220(6) of the Act praying to treat the assessee as not being in default till the disposal of exhibit P-2 appeal. That application has been disposed of by the first respondent as per exhibit P-4 order. As against exhibit P-4, the petitioner firm further filed a revision petition before the second respondent. Exhibit P-8 is the petition and that petition has been disposed of by the second respondent as per exhibit P-9. Now, the petitioner substantially prays for quashing exhibits P-4 and P-9 orders passed by the respondents Nos. 1 and 2, respectively.

3. Heard learned counsel appearing for the petitioner and also Mr. N. R. K. Nair,

standing counsel for the Department.

4. The challenge is mainly directed against exhibit P-4 order passed by the first respondent u/s 220(6) of the Income Tax Act. Sub-section (6) of Section 220 confers power on the assessing authority "in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, to treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of". This provision confers power on the assessing authority to keep the recovery proceedings in abeyance till the disposal of the appeal with or without conditions. Exhibit P-4 order passed in this case by the first respondent, inter alia, provides, "considering the facts and circumstances of the case, the petitioner is allowed to pay the demand in 10 equal monthly instalments commencing from April 15, 1994". It is difficult for me to read this order as an order contemplated u/s 220(6). This order is an another mode of enforcing the recovery of tax. It is apparent that the proceedings for collection of tax have not been kept in abeyance at all. What is directed is that the assessee must pay the entire amount in 10 equal monthly instalments commencing from April 15, 1994. In other words, by virtue of this order, the assessee is compelled to pay the entire amount in ten equal instalments. This court in N. Rajan Nair Vs. Income Tax Officer and Another, has observed (at page 652) ;

"In exercising his power, the Income Tax Officer should not act as a mere tax gatherer but as a quasi-judicial authority vested with the power of mitigating hardships to the assessee."

5. It appears to me that exhibit P-4 order is intended to gather tax and not to stay the collection of tax as contemplated u/s 220(6) of the Act. The principle laid down by this court in N. Rajan Nair Vs. Income Tax Officer and Another, has not been followed in this case by the assessing authority. Learned counsel appearing for the petitioner brought to my notice that a huge addition has been made towards the taxable income in this case. The assessee has filed a return showing an income of Rs. 1,36,240 whereas the assessing authority has fixed the income as Rs. 5,61,200. Counsel for the petitioner says that the explanation offered for price variation in the sale of rubber has not been accepted. A prima facie case, it appears, has been made out in the facts and circumstances of the case. Whatever that be, as far as I could see, exhibit P-4 order does not conform to the various guidelines laid down by this court to be observed while disposing of the application u/s 220(6) of the Act. That being so, I am compelled to set aside exhibit P-4 order and I do so.

6. What remains is the exhibit P-9 order passed by the second respondent. Exhibit P-9 order states that the Assessing Officer has granted instalments and permitted the firm to pay the demand in 10 monthly instalments. According to the second respondent, the order of the assessing authority is reasonable. It is difficult for this court to agree with the conclusion arrived at by the Commissioner. The Commissioner has not given reasons for such an order being

passed. Learned counsel brought to my notice a circular issued by the Central Board of Direct Taxes, which is produced along with this writ petition as exhibit P-10. That circular has been specifically referred to in N. Rajan Nair Vs. Income Tax Officer and Another, and this court has commented on the applicability of the said circular in the following words (at page 654) :

"The instructions indicate the departmental thinking on the subject which is also relevant in the context of exercising the discretion u/s 220(6)."

7. So in view of the above reasons, I am also compelled to set aside the order passed by the Commissioner. Exhibit P-9 is also therefore set aside.

8. Standing counsel submits before me that, inasmuch as exhibit P-2 appeal is pending before the second respondent, a direction may be issued to him to consider and dispose of exhibit P-2 appeal expeditiously. That being so, I need not direct the assessing authority or the Commissioner to pass fresh orders on the application for stay as well as the petition filed before the Commissioner. Considering these submissions made by learned standing counsel appearing on behalf of the Department, I direct the second respondent to consider and dispose of exhibit P-2 appeal as expeditiously as possible, at any rate within a period of three months from today. The next point to be decided is what would be the position with regard to the payment in so far as the demand made under exhibit P-1 order of assessment. Learned counsel submits that the petitioner is not in a position to pay the amount demanded by the assessing authority. He has raised certain questions which, according to him, are prima facie sustainable. Whatever that be, without going into the merits of the contentions raised in this appeal, I feel that a direction can be issued to the authorities concerned to keep the revenue recovery proceedings pending till the disposal of exhibit P-2 appeal for the reasons aforesaid. Accordingly, I direct that no revenue recovery steps shall be taken against the petitioner and the partners of the firm till the appeal is disposed of as directed above.

9. With the above, the writ petition is disposed of.