(1970) 09 OHC CK 0001

In the Orissa High Court

Case No : O. J. C. No. 474 of 1970

GOURISHANKAR APPELLANT

Vs

CERTIFICATE OFFICER, BHADRAK, AND OTHERS. RESPONDENT

Date of Decision : 08-09-1970

Acts Referred:
Income Tax Act, 1961 — Section 222, 226

Citation : (1970) 36 CLT 1268 : (1971) 82 ITR 955

Hon'ble Judges : G. K. Misra, J;Das, J

Bench : Full Bench

Judgement

G. K. MISRA J. - The petitioner is a partner of the registered firm, M/s. Gourishankar Sriram at Bhadrak. For the assessment years 1965-66, 1966-67 and 1967-68 the petitioner was assessed under the Income Tax Act, 1961 (43 of 1961) (herein after to be referred to as "the 1961 Act"), and demands were raised against the firm and its partners. Being aggrieved by the orders of assessment the petitioner preferred appeals which are pending. Notwithstanding the pendency of the appeals, the Income Tax Officer, Ward "A", Baripada, sent a certificate for realisation of the dues to the Certificate Officer, Bhadrak (opposite party No. 1), who started a proceeding under the Orissa Public Demands Recovery Act, 1962 (1 of 1963) (hereinafter to be referred to as "the 1963 Act"). Notice u/s 6 of that Act was issued. The petitioner raised an objection that the tax dues cannot be recovered under the 1963 Act which was no longer applicable to realisation of Income Tax dues after the passing of the 1961 Act. This contention was rejected by the Certificate Officer on the basis of a letter issued by the Board of Revenue. The petitioner also did not press the question of jurisdiction after going through the letter. The writ application has been filed for quashing the certificate proceeding taken under the 1963 Act.

The sole contention of Mr. Mahanti for the petitioner is that the procedure prescribed in the Second Schedule of the 1961 Act should have been followed by opposite party No. 1 and not the procedure in the 1963 Act. The contention requires careful examination.

Section 222 of the 1961 Act runs thus :

"222. Certificate to Tax Recovery Officer. - (1) When an assessee is in default or is deemed to be default in making a payment of tax, the Income Tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule -

(a) attachment and sale of the assessees movable property;

(b) attachment and sale of the assessees immovable property;

(c) arrest of the assessee and his detention in prison;

(d) appointing a receiver for the management of the assessees movable and immovable properties.

(2) The Income Tax Officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken."

The other modes of recovery of the dues referred to in section 222(2) are to be found in section 226.

It would thus appear that section 222 read with the Second Schedule prescribes a complete procedure for recovery of Income Tax dues subsequent to the passing of the 1961 Act, In section 222(1), four different modes have been prescribed. One of the modes is by appointing a receiver for the management of the assessees movable and immovable properties. The provision corresponding to section 222 was in section 46 of the Indian Income Tax Act, 1922 (XI of 1922) (hereinafter to be referred to as "the 1922 Act"), which enacted the mode and time of recovery. Section 46(2) laid down that 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. After the certificate was filed under the old Income Tax Act, the Certificate Officer had to proceed under the provisions of the Bihar & Orissa Public Demands Recovery Act before 1st June, 1964, and the Orissa Public Demands Recovery Act, thereafter. After the passing of the new Income Tax Act, a self-contained provision for recovery of tax dues has been prescribed in the 1961 Act itself. If a specific mode for recovery is provided by the statute for realisation of a certain demand, it is that mode alone through which the recovery of tax is to be made. By necessary implication, the applicability of the 1963 Act for recovery of arrear Income Tax is excluded.

Section 15 of the 1963 Act prescribes modes of execution. Absence of a provision in section 15 of the 1963 Act corresponding to section 222(1)(d) of the 1961 Act, that is, the mode of recovery of tax by appointing a receiver, cannot be overlooked. Unless the mode prescribed in section 222 read with the Second Schedule is followed, two different modes would be available leading to discrimination which is not contemplated by the legislature after the passing of the 1961 Act.

On the aforesaid analysis, the contention of Mr. Mahanti that the procedure prescribed in the Second Schedule of the 1961 Act should have been followed by the Certificate Officer, who is not disputed to be the Tax Recovery Officer, is correct.

The writ application is allowed. The entire proceeding under the 1963 Act started by opposite party No. 1 after receipt of the requisition is quashed. He is directed to proceed in accordance with the procedure laid down in the Second Schedule of the 1961 Act. In the circumstances, there will be nor order as to costs.

DAS J. - I agree.