(1970) 12 CAL CK 0010

In the Calcutta High Court

Case No : Matter No. 675 of 1968

Hindusthan Rubber Works Ltd. APPELLANT

Vs

Income Tax Officer, L-Ward and Others RESPONDENT

Date of Decision : 16-12-1970

Acts Referred:
Income Tax Act, 1961 — Section 220(6)

Citation : 75 CWN 253 : (1971) 81 ITR 397

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Bikas Chandra Sen, for the Appellant;Suhas Chandra Sen, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In respect of the assessment year 1962-63 the petitioner-company submitted a return showing certain loans alleged to have been obtained from different persons. The Income Tax Officer assessed the income including these alleged loans as income from sources undisclosed as he disbelieved the version of the petitioner that these were loans. The petitioner preferred an appeal before the Appellate Assistant Commissioner. In the meantime it appears that the Income Tax Officer had forwarded a certificate to the Tax Recovery Officer and the Tax Recovery Officer had issued a notice under Rule 2 of Schedule II of the Income Tax Act, 1961. The petitioner had also prayed to the Income Tax Officer for grant of a stay of realisation until the disposal of the appeal before the Appellate Assistant Commissioner. On June 29, 1968, the Income Tax Officer bad granted a stay of the certificate up to 30th June, 1968. He informed that to the certificate officer and also had informed that fact to the petitioner. The appeal before the Appellate Assistant Commissioner has not yet been disposed of. The petitioner further applied to the Income Tax Officer for extension of the stay granted and in that application the Income Tax Officer has not passed an order. On the ground that the Income Tax Officer had failed to exercise his discretion by extending the order of stay granted, the petitioner moved an application under Article 226 of the Constitution and obtained a rule nisi. It appears that pursuant to the order of this court the petitioner has furnished security of immovable property and has obtained an interim order of injunction from this court.

2. The question for consideration is, has the Income Tax Officer properly exercised his discretion? If not, can he be made to exercise his discretion in this case ? Sub-section (6) of Section 220 of the Income Tax Act, 1961, provides:

"Where an assessee has presented an appeal u/s 246 the Income Tax Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, 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."

3. It was contended by Mr. Bikas Chandra Sen, learned advocate for the petitioner, that the Income Tax Officer has a discretion which must be exercised for keeping the demand stayed for "so long as the appeal remains undisposed of". He can of course impose conditions for keeping the demand stayed up to that period. The Income Tax Officer can also refuse in a proper case to exercise the discretion. Here, it is apparent that the Income Tax Officer thought it fit that stay should be granted. He did not impose any condition in granting the stay that the petitioner should proceed diligently with the heaving of the appeal. It is not also the case that the appeal has not been heard due to any conduct on the part of the petitioner. Therefore, it appears to me (hat when there was a subsequent application for extension of time and when the petitioner had already been granted a stay without imposing any condition, it was not open to the Income Tax Officer not to exercise his discretion any further. He could have, however, refused to extend the time if there was anything in the conduct of the petitioner which disentitled the petitioner to obtain further stay. But that is not the case here. In that view of the matter it appears to me that from the records it is clear that the Income Tax Officer has not exercised his discretion in dealing with the application for extension. Furthermore, his order dated 29th June, 1968, whereby he granted a stay up to a period was also not proper or correct exercise of the discretion given to him under Sub-section (6) of Section 220 of the Income Tax Act, 1961. The sub-section enjoins in a particular case, if the Income Tax Officer is otherwise satisfied, to keep the demand in abeyance "so long as the appeal remains undisposed of". The Income Tax Officer has discretion for good reasons not to grant any stay at all, he has also the power to impose such conditions as he considers necessary, for example, security might be required or diligence on the part of the assessee in the prosecution of the appeal might be insisted. But arbitrarily to grant a stay up to a period, and not so long as "the appeal remains undisposed of" is not a proper exercise of discretion by the Income Tax Officer under Sub-section (6) of Section 220 of the Income Tax Act, 1961. Mr. Suhas Chandra Sen, appearing on behalf of the revenue, drew my attention to the observations of the Supreme Court in the case of Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat, . Mr. Sen drew my attention to the

observations appearing at page 814 of the report where it was stated that, unless the particulars were given that the discretion was exercised in an arbitrary or capricious manner, the court should not interfere with the exercise of the discretion of the Income Tax Officer u/s 220(6) of the Act. In this case, however, it appears to me from the order itself that the discretion has not been exercised on a correct principle. Furthermore, in this case failure to deal with the application for extension also, in my opinion, has established the fact that the discretion has not been properly exercised. Mr. Suhas Sen also drew my attention to the observation of Subba Rao C.J. (as his Lordship then was) in the Andhra Pradesh High Court decision in the case of Vetcha Sreeramamurthy v. Income Tax Officer, Vizianagram ITR 1956 (A.P.) 252 In view, however, of the facts of this case, I do not think it is relevant for me to discuss the aforesaid decision in detail.

4. In the above view of the matter I would have to make the rule absolute ; but, in the facts and circumstances of this case, that would entail that the Income Tax Officer would have to decide the application afresh. The order that I make, in the facts and circumstances of this case, is that the stay granted by this court will continue until disposal of the appeal by the Appellate Assistant Commissioner. The security furnished by the petitioner in favour of the Registrar, Original Side, will continue until the disposal of the appeal by the Appellate Assistant Commissioner. After the disposal of the appeal, if any moneys are due from the assessee, the Income Tax department and the certificate officer will be entitled to proceed against the property which has been given as security and the said security will be available for enforcement of the realisation of the dues under the certificate. I dispose of this application accordingly and, in the above view of the matter, no further order on this application is made.

5. The rule is disposed of accordingly. There will be no order as to costs.

