

(2002) 06 KL CK 0018

In the High Court Of Kerala

Case No : Writ Appeal No. 559 of 1996 13 June 2002

Kurumber Betta Estate

APPELLANT

Vs

ITO and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 154, 155, 199, 220, 226(3)

Citation : (2002) 176 CTR 426

Hon'ble Judges : B.K Srikrishna, C.J;G. Sivarajan, J

Bench : Full Bench

Advocate : P. Santhalingam, for the Assessee P.K. Ravindranatha Menon and N.R.K. Nayar, for the Revenue, for the Appellant;

Judgement

B.K Srikrishna, C.J.

This writ appeal impugns the judgment of the learned Single Judge dated 15-11-1995 (Kurumber Betta Estate v. ITO & Ors. (1996) 130 CTR (Ker) 345Ed.), dismissing the original petition. The question of law that arises here for our consideration is : whether the amount kept in simpliciter deposit with the revenue authorities without being appropriated towards the tax due of an assessee would be liable to attract interest for the period it was lying in deposit ?

2. The petitioner is a partnership business which was running a cardamom and tea estate known as Kurumber Betta Estate in Nilgiris. The partnership consisted of three partners, one of whom, S. Chenniah, was a resident of Mysore, Karnataka, and the other two partners were residents of Kerala State. The said Chenniah was a defaulter of tax and accumulated Income Tax arrears. All his properties in Karnataka were subjected to recovery proceedings by the Income Tax authorities. A notice dated 28-12-1998 (sic), was issued by the TRO, Mysore, addressed to M/s Kurumber Betta Estate ordering that the share of said S. Chenniah in Kurumber Betta Estate and the profits of the said property were charged with the payment of amount of Rs. 7,41,678.10 as certified to the TRO

by the Income Tax Officer, Central Circle-I, Bangalore, together with interest payable, u/s 220(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The notice also directed that no amount due or payable on any account should be, paid without written order from the office of TRO. By a letter dated 26-12-1977, at Ext. P2, the managing agent of Kurumber Betta Estate sought clarification from the Income Tax Officer, Central Circle-I, Bangalore, as to whether the partnership property could be partitioned and the share of S. Chenniah who had since deceased, could be given to his legal heir, Smt. Prameela Krishnan, or in the alternative, whether the share of S. Chenniah could be sold and the sale proceeds be paid to the legal representative. On 5-1-1978, vide Ext.P3, a garnishee notice was served on the managing agent of Kurumber Betta Estate u/s 226(3) of the Act calling upon him forthwith to pay any amount due from him or held by him for and on account of S. Chenniah to the extent of Rs 20,18,448 which was due from deceased S. Chenniah. There was no action taken by the Kurumber Betta Estate on the garnishee notice and no payments were made pursuant thereto. In the meantime, the partnership itself had run into difficulties and the partners decided to liquidate their liability by selling the assets in the partnership firm. Since the assets of partnership comprised immovable properties of large value, they were obliged to seek permission from the Income Tax Department. When the Income Tax Department was moved for permission to sell the estate, the department agreed to grant such permission on condition that one-third of the sale price be kept in deposit or secured by way of bank guarantee for meeting the final Income Tax dues of deceased S. Chenniah. On 14-3-1987, vide Ext. P4, the managing agent of Kurumber Betta Estate addressed a letter to the TRO and offered to deposit the amount required and not to go in for bank guarantee, as it was anxious to complete the sale without further delay. The offer was to deposit the entire one-third of the sale proceeds without prejudice to the contention that they were liable to deposit only one third of the net sale proceeds after paying off all liabilities incurred for maintenance and running of the estate. This is confirmed by the letter dated 24-3-1987, addressed by the TRO, Bangalore to Kurumber Betta Estate, in which he conveyed that, after discussion with the Commissioner, he had been instructed to call for a demand draft for a sum of Rs. 11,67,000 in favour of TRO, Mysore, which would be kept in deposit "to be appropriated towards Income Tax after final settlement of the liability of S. Chenniah, towards the firm of M/s Kurumber Betta Estate" (Though this document is not on record, at our request, the learned counsel for the appellant produced it and we have perused it). The position was clarified by the Kurumber Betta Estate by a further letter dated 5-7-1987 (vide Ext. P5), addressed to the TRO, Mysore. This letter is crucial, in our view, and bears reproduction in full. The letter reads as under :

"As per your communication No. TRO/Mys./S. Chenniah/1986-87 dated 24-3-1987 and subsequent correspondence on the subject we are enclosing DD No. 1818, dated 6-7-1987, for Rs. 11,67,000 drawn on M/s Canara Bank, Mysore, in your favour to be kept in deposit for appropriate towards Income Tax

after settlement of the matter of liabilities of Sri. S. Chenniah towards the firm of M/s Kurumber Betta Estate. In other words, only after settlement of the legal position relating to the share of late Sri S. Chenniah in the proceeds of the Estate whether it is 1/3 of the total sale price, or only 1/3 of the balance after deducting the liabilities of the Estate the D.D. in whole or in part can be appropriated."

3. After having deposited Rs. 11,67,000 towards one-third of gross sale proceeds, Kurumber Betta Estate agitated the issue before this court as to whether the deposit had to be of one-third of the gross sale proceeds or the net proceeds after deducting the liability of the estate. Finally, in the judgment delivered in O.P. No. 9337/90 (vide Ext. P7) [ITO v. Kurumber Betta Estate (1992) 102 CTR 27Ed.], this court held in favour of Kurumber Betta Estate that only after the liability of the firm as on the date of death of S. Chenniah were met, the balance could be demanded and appropriated by the department. This decision was confirmed in appeal by a Division Bench of this court, vide Ext. P8 judgment.

4. Although the Income Tax Department agreed to abide by the request of keeping the amount of Rs. 11,67,000 without appropriation till the issue was resolved by this court, it seems that the issue of appropriation was referred to the Central Board of Direct Taxes and on their advice, the entire deposited amount was appropriated towards the tax dues of Chenniah without waiting for the final outcome of the original petition on 17-2-1989. After the judgment in O.P. No. 9337/90 and its confirmation in appeal by Ext. P8 in W.A. No. 23 of 1992 on 10-1-1992 ITO v. Kurumber Betta Estate (1992) 102 CTR 244Ed.), the Income Tax Department, by letter dated 8-11-1993, (Ext. P9), refunded the excess amount in their hand of Rs. 14,64,306 to the managing agent of M/s Kurumber Betta Estate. In para 4 of the letter, it was specifically pointed out that interest u/s 244(1A) was allowed from 17-2-1989, to the date of refund and the interest amount at the rate of 15 per cent per annum came to Rs. 7,00,910. By a letter of 14-1-1994, the managing agent of Kurumber Betta Estate raised a contention with the Commissioner, Karnataka-III, Bangalore, that the period of calculation of interest was wrong and that the Estate was entitled to interest at 15 per cent right from 6-7-1987, on which date the deposit was made. Hence, they claimed interest on Rs. 11,67,000 from 6-7-1987 to 17-2-1989. This claim was rejected. M/s Kurumber Betta Estate brought O.P. No. 3579 of 1996 (sic-1995) claiming the aforesaid amount. The learned Single Judge who heard the petition dismissed the petition by holding that there was no liability to pay interest. Being aggrieved, the Estate is in appeal before us.

5. The crucial question on which the appeal turns is, what was the nature of the amount retained in the hands of the Income Tax Department from 6-7-1987 to 16-2-1989. The material on record to which we have referred in extenso clearly indicates that, in proceedings other than the proceedings pertaining to the tax liability of deceased S. Chenniah, a partner of the appellant-firm, as a condition

for granting permission for sale of the firm's immovable property, the Income Tax Department required security to the extent of one-third of the gross sale proceeds. They gave two options to the appellant-firm, either to make a cash deposit or furnish a bank guarantee in equivalent amount. It is the appellant which choose of making a cash deposit. Thereafter, the appellant's correspondence with the department shows that they did not want appropriation of the amount towards Income Tax dues immediately, but wanted the Income Tax Department to retain it as a deposit to be appropriated subsequently when the tax dues of deceased Chenniah were finally determined. The revenue acceded to this request. In other words, both the revenue and the appellant were conscious of the fact that money was retained in the hands of the revenue only by way of deposit as security for meeting the liability. At no time was it appropriated in discharge of the tax liability of deceased S. Chenniah, till the Central Board of Direct Taxes advised to take such action. It is on the instructions of the Central Board of Direct Taxes at the instance of the TRO, the amount in deposit was appropriated on 17-2-1989, towards meeting the tax liability of S. Chenniah. On and from that date the amount became liable to fetch interest under the provisions of Income Tax Act u/s 244A. Prior thereto, it was retained by the Income Tax Department as a non-interest bearing deposit. There is no other provision in the Income Tax Act to pay interest except u/s 244. Section 244A would spring into action only in the event of refund of excess amount of tax, penalty, tax collected at source or paid as advance tax, or treated as paid u/s 199. The liability of the revenue to pay interest u/s 244A is only towards the excess amount of tax, or penalty, demanded and collected by it in discharge of the liability of an assessee. We do not see nor are we advised of, any provision in the Income Tax Act, which requires the revenue to pay interest on amount kept in such deposit. At our instance, learned counsel for the revenue, explained to us by reference to the clarification he had sought from the Commissioner and the SBI that, during the period from 6-7-1987 to 16-2-1989, the amount was held in a personal deposit account. We are informed that under administrative circulars, amounts which were not to be appropriated to revenue are held in Personal Deposit Account to be kept in the name of certain officers, including TRO. These amounts are actually treated as amounts of the government over which the bank has no authority. In other words, instead of depositing the amount in the Treasury, the bank holds it as an agent of the treasury for the purpose of holding the money. Such amounts which are held as security cannot be utilised by the bank, would not bear any interest, and the revenue also would not be entitled to any interest on such amount held. All amounts which are collected otherwise than by way of tax or penalty are credited to this Personal Deposit Account. Amounts such as seized cash are also credited to this account.

6. Learned counsel for the appellant strenuously contended that, irrespective of any other provision of law, if the revenue held excess money to the tune of Rs. 10,01,311 from 6-7-1987 to 16-2-1989, then equity demands that revenue should be directed to pay interest at the same rate as paid subsequent to

17-2-1989. It is an accepted proposition in tax jurisprudence that tax laws know no equity. There cannot be a direction to the revenue to pay interest in equity, when there is no such provision in the Income Tax Act. [See in this connection the judgment of the Supreme Court in *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, .

7. What the learned counsel really wants is that the revenue should be directed to pay damages. We hardly think that such an exercise can be carried out in a petition under Article 226 of the Constitution. For this reason also, we are unable to accept the contention based on equitable consideration. Learned counsel relied on the decision in *Beharilal Ramcharan Vs. Income Tax Officer, Special Circle "B" Ward, Kanpur and Another*, in support of his contention. We find that in *Beharilal Ramcharan (supra)*, the proceedings were initiated u/s 226(3) of Income Tax Act, and therefore, the Supreme Court came to the conclusion that a notice under clause (i) of sub-section (3) of section 226 had to be given to the garnishee giving an opportunity of objecting, and making an order behind the back of the garnishee was invalid and liable to be set aside. This decision has hardly any application to the facts of the case on hand.

8. Learned counsel relied on the decision in *Surinder Nath Kapoor Vs. Union of India (UOI) and Others*, . This was a case where a garnishee notice was wholly unjustified in the facts and circumstances of the case, and therefore, the Supreme Court directed the revenue to pay interest for the period it wrongly held the money by reason of the fact that the amount had been collected by resorting to section 226(3)(x) of the Income Tax Act. This was also not a case of non-appropriation or mere deposit.

9. Finally, learned counsel relied on the decision of the Bombay High Court in *Commissioner of Income Tax Vs. S.C. Shah*, . In our view, this judgment has no application at all. The High Court merely held that refusal to grant interest on refund of tax was appealable under sections 154, 155 read with 246(1)(F) of the Income Tax Act. This was a case of refund of tax collected and, therefore, there was no question of amount being held as deposit.

10. In the result, we are of the view that the learned Single Judge was right in his conclusion that no interest was payable on the excess amount held in the hands of the revenue as deposit for the period from 6-7-1987 to 17-2-1989. We see no error in the judgment. There is no substance in the appeal.

The appeal is dismissed. No order as to costs.

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