
(1955) 05 CAL CK 0031
In the Calcutta High Court
Case No : Suit No. 138 of 1954

Laduram Taparia

APPELLANT

Vs

D.K. Ghosh and Others

RESPONDENT

Date of Decision : 13-05-1955

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 3(3), 51, 7
Constitution of India, 1950 — Article 14
Income Tax Act, 1922 — Section 29, 46(5A)

Citation : AIR 1956 Cal 504 : (1956) 29 ITR 103

Hon'ble Judges : Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows :

2. The petitioner is a firm carrying on business in "partnership under the name and style of Laduram Taparia. According to the petitioner, it has 3 partners -- Laduram Taparia, Ganpat Ram Taparia and Bhairordan Maheswar. This firm was registered u/s 26A, Income Tax Act. It was duly assessed as such for the assessment years 1042-43, 1943-44, and 1944-45. In July 1947, the firm submitted a return for the assessment year 1945-46, showing a total income of Rs. 33,105/-, subsequently corrected as Rs. 33,703/-. The Income Tax Officer had information that the constitution of the petitioner firm was not genuine, and he refused to continue the registration u/s 26A, Income Tax Act, and assessed the petitioner firm as an un-registered firm. He also added to the total income of the said firm, the total income of 5 other firms, namely,

- (1) Jagannath Hanumanbux,
- (2) Jagannath. Harnarayan,
- (3) Ganpatirai Jorawarmal,

(4) Seth Laduram Taparia, and

(5) Seth Laduram Taparia & Co.

According to the Income Tax Officer, these were not bona fide firms but were benarni businesses carried on for the purpose of depriving the Government of Income Tax. It was found that the total income was Rs. 10,23,388/- and the Income Tax payable was Rs. 8,67,239/10/0. These 5 firms were also assessed separately by way of what is known as "protective assessment". On or about the 30th of March, 1950 notice u/s 29, Income Tax Act, was issued upon the petitioner calling upon it to make payment of tax amounting to Rs. 8,67,239/10/0, on or before 28-4-1959. The petitioner firm, as well as the said 5 firms, preferred appeals against their respective assessments, as also against the respective orders refusing registration u/s 26A, Income Tax Act. On or about 26-3-1951 the Income Tax Officer forwarded to the Certificate Officer, 24 Parganas a certificate within the meaning of Section 46(2), Income Tax Act, requesting the latter, to commence proceedings for recovery of the sum of RS. 8, 67, 239/10/0 from the petitioners. On 31-3-1951, a certificate was issued by K. P. Nayak, the then Certificate Officer, 24 Parganas and proceedings were commenced registered as No. 2927 I. T. of 1950/51. The petitioner came up to this Court and made an application under Article 226 for the cancellation of the demand notice, and on or about 26-2-1951 Bose J. granted the Writ. The Government preferred an appeal against the said order and sometimes in January, 1952 the appeal was successful and the order was set aside. On or about 15-7-1952 the Income Tax Officer requested the Certificate Officer to enforce the certificate and on 24-7-1952 notice was issued u/s 7, Bengal Public Demands Recovery Act, and served on the petitioner on the 1st of August, 1952. The notice bore a rubber stamped signature of the Certificate Officer. On 19-8-1952 the petitioner filed objection u/s 9 of the P. D. R. Act. OB 29-11-1952 the appeals preferred by the petitioner against the order of assessment and the order refusing registration, were disposed of by the Appellate Assistant Commissioner of Income Tax, who held that the application for registration was rightly refused. The assessment was however reduced by Rs. 10,756/- On 11-11-1953 respondent 1, D. K. Ghosh withdrew the certificate case to his own file. In the meantime, the Income Tax Officer by his letter dated the 10-4-1953 had informed the Certificate Officer that the revised demand stood at Rs. 8.56,987/13/0. On 27-11-1953 the certificate was amended. In this case the appointment and jurisdiction of respondent 1 has been emphatically challenged. It is, therefore, necessary to mention that on 9-10-1953 the respondent was appointed by Notification No. 20394 L.R. as a Certificate Officer and Additional District Magistrate. It appears that the said respondent was a member of the Indian Administrative Service who had retired and was then re-appointed as aforesaid. On 13-2-1954 two further Notifications were published, one being Notification No. 476 G.A./5C-21/54 whereby the said respondent was vested with powers of a Magistrate of the first class and the other Notification No, 477 G.A./5C-21/54 by which the said respondent was directed to act as an Additional

District Magistrate with all the powers of a District Magistrate. Copies of these Notifications have been collectively filed and marked as Ex. "A". I have mentioned above that the assessment was reduced by an order of the Appellate Assistant Commissioner of Income Tax. As against his order, second appeal was taken before the Income Tax Appellate Tribunal. By its order dated 28-4-1954 the Appellate Tribunal found that the profits of two of the firms, namely, Seth Laduram Taparia and Seth Laduram Taparia & Co. were wrongly included in the said assessment and the total income was reduced by Rs. 1,39,538/-. On 14-3-1954, the Income Tax Office wrote to the Certificate Officer, 24 Parganas as follows :--

"Sir.

This is to inform you that the assessment (for the year 1945-46) in respect of the above certificate case has been revised as per orders of the Appellate Tribunal. The reduced demands now recoverable from the above assessee are noted below for your information. The revised demands may now kindly be substituted for the original certificate demands and necessary steps may be taken to realise these amounts from the assessee concerned."

3. The total demand was mentioned as Rs. 7,23,990/10/0.

4. On 12-7-1954 the Certificate -was accordingly amended. Respondent 1 then proceeded to hear the objection already filed by the petitioner u/s 9 of the P. D. R. Act, when the objection was pressed before him that the notice u/s 7 which had been issued on or about 1-8-1952 bore the rubber stamped signature of the Certificate Officer. It has been held by a decision of this Court, Abanindra Kumar Maity Vs. A.K. Biswas, (A), that both the original certificate and the notice u/s 7 must be actually signed by the Certificate Officer and should not bear the facsimile, or rubber stamped signature of the Certificate Officer. In order to regularise the proceedings, respondent 1 caused a fresh notice u/s 7 to be issued in respect of the revised demand, and the amended certificate as well as this notice bear the signatures of the Certificate Officer, namely respondent 1. The petitioner filed an objection to this notice on 9-9-1954 u/s 9 of the P. D. R. Act, and the objection is still pending. This rule was issued on 7-9-1954 directing the respondents to show cause why an order in the nature of a Writ of Certiorari should not be made quashing the certificate proceedings and/or to refrain from continuing the same and why respondent 2 should not recall, withdraw or cancel the notice issued u/s 46 (5-A), Income Tax Act, & for other reliefs. I might mention here that on 17-8-1954 the authorities had issued notice under S, 43 (5A), Income Tax Act, asking various debtors of the petitioners not to pay moneys due to it, but to pay the same to the Income Tax authorities.

5. Mr. Mitra appearing on behalf of the petitioner, has taken 4 points which may be enumerated below :

1. That the respondent No. 1 D. K. Ghosh was not validly appointed as a Certificate Officer and that it was incompetent for him to have with-drawn the

case to his own file, and thereafter to deal with it.

2. As the amount payable was reduced by the Appellate Tribunal, the original certificate proceedings can no longer continue. There should be a fresh demand made u/s 29, Income Tax Act, fresh certificate issued, and fresh proceedings initiated.

3. Section 51 of the P. D. R Act is ultra-vires, as it is discriminatory and offends against Article 14 of the Constitution.

4. That Simultaneous proceeding u/s 46 (5A), Income Tax Act, is incompetent.

6. The first point has been developed by Mr. Mitra in the following manner. He first of all refers to the definition of a "Certificate Officer," as laid down in Section 3(3) of the P. D. R. Act. It is as follows :--

"Certificate Officer means a Collector, a Sub-divisional Officer, and any officer, appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer under this Act."

7. Reference is also made to Section 3(3a), which is as follows:

"Collector means the Chief Officer in charge of the Revenue administration of a district and includes an Additional District Magistrate appointed under Sub-section (2) of S, 10 of the Code of Criminal Procedure."

8. We next come to Section 10(2) of the Criminal Procedure Code, which in as follows :

"The State Government may appoint any Magistrate of the First Class to be an Additional District Magistrate; and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the State Government may direct."

9. According to the Bengal General Clauses Act, Section 3(8) "Collector" means the Collector of Calcutta, in Calcutta, and elsewhere the Chief Officer in charge of the Revenue administration of a district. The definition in the Indian General Clause Act. Section 2(10) is practically the same.

10. It is firstly argued that in order to be a Certificate Officer, respondent 1 had to be a Collector, which by virtue of Section 3(3a) would also include an Additional District Magistrate. Mr. Mitra argues that the Collector must be the Collector of Calcutta, and an Additional District Magistrate appointed in 24 Parganas is not a Collector. This point, however, is covered by a Division Bench decision of this Court D. N. Bhatlacharyya v. Union of India, C. R. No. 654 of 1953 (B) (Judgment 4-3-1934). It was held there that by a notification dated 31-5-1875 published in the Calcutta Gazette on 9-0-1875, the Collector of 24 Parganas was appointed to be the ex-officio Collector of Calcutta. It was accordingly held that a certificate proceeding before the Certificate Officer, 24 Parganas was quite in order,

11. It is next argued that the very appointment of respondent 1 is defective. It is said that respondent 1 was a retired member of the Indian Administrative Service. Therefore, on 9-10-1953 he could not be appointed as an Additional District Magistrate, because u/s 10(2) of the Code of Criminal Procedure, it is only a Magistrate of the First Class who can be appointed an Additional District Magistrate. Obviously, on 9-10-1953 Mr. Ghosh was not a Magistrate of the First Class. In fact, he was not a Magistrate at all, having retired from service. It follows that if his appointment as an Additional District Magistrate was not in order, his appointment as Certificate Officer is also invalid. The question is whether, the notifications published on 13-2-1954 have altered the situation. On that date, Mr. Ghosh was appointed a Magistrate of the First Class, and was empowered to act as an Additional District Magistrate, 24 Parganas, vested with all the powers of a District Magistrate. His appointment as a Certificate Officer was also re-affirmed. It seems to me that by these notifications all the objections have been removed. Firstly, having been appointed as a First Class Magistrate, he could be appointed u/s 10(2) of the Criminal Procedure Code, as an Additional District Magistrate and having been appointed as an Additional District Magistrate he comes within the definition of a Collector as laid down in the P.D.R. Act. which in turn validates his appointment as a Certificate Officer. Learned counsel argued that these notifications (Ex. "A") do not appoint the respondent as a First Class Magistrate, but merely vest him with the power of a Magistrate of the First Class. I however fail to see the difference. It is also said that even if the appointment of the said respondent as an Additional District Magistrate is valid, his appointment as a Certificate Officer, prior to his appointment as a Collector cannot be valid and there is no fresh appointment as a Certificate Officer. I cannot say that this is a ground entirely devoid of substance, and the notifications might have been more carefully worded. There is, however, a clear confirmation of his appointment as a Certificate Officer and as there is no particular procedure laid down for such appointment, I think that this argument cannot be given effect to, and that there is a valid appointment of respondent 1 as a Certificate Officer.

12. It is obvious however, that the appointment of respondent 1 was only valid from 13-2-1954 and that previous to that date, he had no power or jurisdiction to act as a Certificate Officer. It is argued that on 11-11-1953 respondent 1 withdrew the case to himself and that on 27-11-1953, the certificate was amended for the first time and that these two acts are invalid. There can be no doubt that they are invalid. Mr. Meyer has, however argued that these two actions on the part of respondent No. 1 have not invalidated the subsequent proceedings. Firstly, he says that the certificate which is now sought to be enforced is the certificate which was amended on 12-7-1954 when the said respondent was properly appointed, or in other words, all the defects in his appointment were removed. Secondly, he says that although a second order of withdrawal was not made by the said respondent there is little point in holding that he should have solemnly sent the case back to some other Certificate Officer

and then withdraw it again to himself. He points out that there is nothing in the P.D.R. Act which prevented the said respondent from continuing the proceedings which were before him. I do not myself find from the said Act anything which prevents a Certificate Officer, being a Collector, , to deal with certificate proceedings. Mr. Mitter argued that by this transfer from a Certificate Officer who was not a Collector, to a Certificate Officer who was a Collector, the petitioner has been deprived of an appeal to the Collector. This is a point which I shall further deal with under the heading of "Discrimination". I do not see, however, how this fact can invalidate the proceedings. A Certificate Officer who is a Collector, can entertain the proceedings from the beginning or take it up at any stage. Therefore, the fact that the original notice u/s 7 was issued by some other Certificate Officer who was not a collector, does not invalidate the proceedings. On the other hand, it will be remembered that the notice u/s 7 initially given was bad and that the second notice was actually issued by respondent 1 himself. It is next said that once the initial notice u/s 7 was found bad, it was not competent for respondent 1 to issue a second notice u/s 7, while objections u/s 9 had already been filed in respect of the first notice, I do not see why, if a particular notice u/s 7 is defective and not in accordance with law, a second notice cannot be issued. All that the petitioner can say is that upon the service of a second notice, it should have a second chance of making an objection u/s 9. But this is precisely what it had done, upon the second notice u/s 7 having been served. It has made a fresh objection u/s 9 of the P. D. R. Act, and this objection is now pending. Lastly, Mr. Mitra argued that there is no provision, in the P. D. R. Act or any rules framed thereunder, whereby a proceeding can be transferred from one Certificate Officer to another. I think this is a purely administrative matter and there is no law or rule which prevents it being done.

13. A point was made that the copy of the certificate that was served on the petitioners together with the notice u/s 7, has not been signed by the Certificate Officer but there is a rubber stamped signature. There is, however, no point in this because the original certificate as amended on 12-7-1934, has been signed, and a copy which is served with the notice u/s 7 need not be signed. This point accordingly fails.

14. The second point has been argued with great emphasis by Mr. Mitra. According to him, Income Tax is not due and payable unless notice of demand has been served u/s 29, Income Tax Act. He says that this notice is in the prescribed form and tells the assessee how much to pay, where to pay and the time within which to pay. In this particular case, the petitioner was asked to pay a certain sum to the Reserve Bank of India within a specified time. He says that once the appellate court has passed an order, this notice is no longer valid, and a certificate issued in respect thereof together with the certificate proceedings on the strength of such certificate, become void. It is argued that, upon the Appellate order coming into force (even if it is an order of dismissal of the appeal), the original assessment order has vanished, and so there will have to be a fresh demand made u/s 29 and fresh certificate proceedings commenced. What

has happened in this case in point of fact is that a notice was served u/s 29 specifying a certain amount to be paid into the Reserve Bank within a specified time. Then the Appellate Tribunal scaled down the total amount by about a lac of rupees. In the judgment of the Appellate Tribunal, however, there is no revised calculation as to the amount of tax that will have to be paid by the assessee as a result of the scaling down, nor is there any direction as to where it should be paid and when, what happened was that the Income Tax Officer recalculated the amount that was payable and informed the Certificate Officer as well as the petitioner (see Ex. "B") of the revised sum that has to be paid, Firstly, it must be remembered that the amount payable was less than the amount originally assessed, and secondly that the certificate was amended in accordance with the revised sum payable under the orders of the Appellate Tribunal. Mr. Meyer contends that the mere fact that the amount payable is scaled down by an appellate order does not mean that the original demand notice u/s 29 has vanished. The original notice is there and if the assessee and the Certificate Officer are informed that the notice stands modified according to the revised sum ordered by the Appellate Tribunal, that is a sufficient compliance with the provisions of Sections 29, 45 and 43 (2), Income Tax Act. He concedes that if the Appellate Tribunal enhances the tax, then for the excess sum there is in existence no demand u/s 29, and as such, a fresh demand notice must be issued for the excess sum. But where the amount of the original assessment has been upheld, or is reduced, then no fresh demand need be issued, but the original demand as modified will be deemed to be a demand u/s 29. He says that otherwise the most surprising results will happen. Even if the appeal is dismissed, it will be contended that the order of the Appellate Tribunal had superseded the original order and therefore a fresh demand has to be made and the amount of tax never became due until the new demand was served. In the meanwhile, suppose certain proceedings had been taken and the properties of the assessee attached, and suppose in defiance of the attachment he had dealt with these properties, -- then it will be argued that since the tax never became due until the fresh demand notice has been served, such dealings were perfectly valid. This, Mr. Meyer says, is an absurd position.

15. Mr. Meyer has cited upon this point a decision of the Allahabad High Court : Municipal Board Vs. Commissioner of Income Tax, (O), In this case, the Municipal Board. Agra was assessed for Income Tax amounting to Rs. 9536/- and a notice of demand u/s 29 was issued. Thereafter, an application was made u/s 35 for rectification of certain alleged mistakes and, in fact, the mistakes were detected and corrected. Thereupon a notice was given that the original demand was reduced to Rs. 122/2/-. The question arose as to Whether it was necessary to give a second demand notice u/s 29, in respect of the reduced sum. Malik, C. J. said as follows :

"It is clear, therefore, that a fresh notice of demand is required to be issued only when the assessment has been enhanced or the refund order has been modified to the detriment of the assessee. Where the order is in favour of the assessee,

all that can be said is that a part of the demand has been cancelled or rescinded allowing the Jest to stand. In such a case no Question or a fresh notice of demand u/s 29 becomes necessary."

16. The way that Mr. Mitra has formulated his objection is as follows: He first of all points out to the provisions of Section 29 which is as follows :

"2ft, Notice of demand. -- When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income Tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable."

17. Mr. Mitra next refers to the provisions of Section 45 of the Income Tax Act the relevant provisions of which are as follows :--

"45. Tax when payable:-- Any amounts specified as payable in a notice of demand under Sub-section (3) of Section 23A or u/s 29 or an order u/s 31 or Section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that when an assessee has presented an appeal u/s 30 the Income Tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of."

18. Next, he refers to the provisions of S, 46(2) of the Income Tax which are as follows:--

"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 amounts specified therein as if it were an arrear of land revenue."

19. Reference is made to the case of Commissioner of Income Tax, Bombay North Vs. Tejaji Farasram, (D), where it was held that once an appeal was preferred from the order of the Income Tax Officer and an order was passed in that appeal, the order of the Income Tax Officer became merged in the order of the Appellate Assistant Commissioner. This was a case where it had to be considered as to whether after such an order had been made, it was any longer open to the Commissioner to take proceedings u/s 33 (B) of the Income Tax Act. It was held that the power of revision vested in the Commissioner u/s 33(B), was against an order of the Income Tax Officer. Therefore, once an order was made by the Appellate Assistant Commissioner, the order of the Income-tax Officer had merged in that order, and the Commissioner could no longer exercise his power of revision u/s 33(B). Reference was also made to the case of Satyanarayan Prosad Vs. Diana Engineering Co., (E). It was held there that once an appeal was filed, the original decision loses its character of finality and what was once res

judicata again becomes *res sub judice*. The appeal destroys the finality of the decision, the decree of the lower Court being superseded by the decree of the Appeal Court.

Similarly, in *A. Chetty v. B. A. Thorhil* AIR1951 PC 263 (F) it was held that where an appeal lay, the finality of the decree was destroyed upon the appeal being preferred. Consequently, where pending an appeal, a suit was instituted on the same cause of action and between the same parties, the proper course for the Court, was to adjourn the action pending the decision of the Appeal Court. Reference is also made to Section 37 of the Code of Civil Procedure. It is argued that the tax is no longer payable on the original assessment of the Income Tax Officer but that it is now payable under the orders passed by the Appellate Tribunal u/s 29 a notice of demand will have to be given not only where any tax is payable in consequence of the original assessment order but also where there is an order passed by the Appellate Tribunal. It is stated that u/s 45, all kinds of particulars are to be given in the notice of demand, namely, how much tax was to be paid, when it is to be paid, place where it is to be paid, and to whom it is to be paid. In the original notice of demand, served pursuant to the assessment order, these particulars were there. It is stated however that after the order of the Appellate Tribunal scaling down the amount due, there was no fresh notice of demand u/s 29, so that there was no compliance with the provisions of Section 45, and it was not intimated to the assessee as to where he should pay the amount and within what time. It is conceded that u/s 45 there is a presumption as to the time within which it should be paid, but the other objection remains. It is further argued that the Appellate Tribunal ought to have calculated the amount which was payable and that a calculation by the Income Tax Officer is not justified and no such power has been conferred upon him by the Act.

20. Mr. Meyer does not contest that Section 29 as amended enables a notice of demand to be given in respect of every order made under the Act. He argues however that in a case where there has been an assessment order passed by the Income Tax officer and this amount has been reduced by an appellate authority, it can never be said that the amount that is payable has at any time ceased to be payable. The liability to pay income tax arises as soon as income has been made and the rate has been fixed by the annual Finance Act. It becomes due as soon as notice u/s 29 has been served. When an appeal has been preferred, there is no automatic stay of proceedings and the Income Tax Officer is not bound to stay proceedings for the recovery of the tax unless there is a stay order. It is true that) in a sense the appellate order unsettles the original order which merges in the appellate court but this does not mean that it is an order for payment of a sum entirely unconnected with the original assessment, where the amount payable has been enhanced, then for the amount which is not covered by the original assessment order the only order that makes it payable is the appellate order. But where the amount is scaled down, although further proceedings must continue on the basis of the appellate order, it is in my opinion wrong to think that at any point of time subsequent to the notice or demand u/s 29, in respect

of the original assessment, the amount of tax ceased to become due or payable. The position therefore appears to be as follows : If there is an assessment order and a demand notice u/s 29, and on appeal the amount assessed is reduced, then it would be sufficient to intimate to the assessee that the amount due has been so reduced. In my opinion, it is not essential in such a case to serve a second notice u/s 29. Coming now to the certificate proceedings, 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 upto that point of time. Lastly, as regards the order of the Appellate Tribunal, it is true that the Appellate Tribunal itself did not calculate the exact sum that would be due. The order merely declares that the total income should be reduced by about a lakh of rupees. The question is whether it is competent for the Income Tax Officer to calculate the exact amount due and inform the certificate officer and the assessee of the sum due pursuant to the order of the Appellate Tribunal. Such a calculation, in my opinion, is merely a ministerial act and I do not see anything which prevents the Income Tax officer from making the calculation and thus giving full effect to the order of the Appellate Tribunal. Such orders are often made even in Civil Courts. In these Courts, we often declare that interest or mesne profits would be due at a particular rate, without ourselves calculating the exact amount which is to be paid. This is calculated in the department when drawing up the order or at the time of execution. In the case of the order of the Appellate Tribunal, nothing more has happened. The Tribunal has scaled down the total income, the rest is merely arithmetical calculation, which was done by the Income Tax Officer. The actual amount due, as communicated, is not stated to be under orders of the Income Tax Officer, but under orders of the Appellate Tribunal. In this view of the matter, the assessee had no difficulty in finding out, as to where he was to pay the sum, to Whom and within what time. So far as the place of payment is concerned, that had already been mentioned in the original notice of demand, the reduced amount payable was duly communicated to the assessee, and the time within which it was payable was laid down by Section 45 of the Act. It was only in the event of the amount of tax payable being enhanced that the whole process of serving notice u/s 29, would have had to be repeated for the enhanced sum. In my opinion, inasmuch as the present case is concerned with a reduction in the assessment, it was not necessary to serve a new notice of demand u/s 29, and the procedure adopted was in accordance with law.

21. I now come to point No. 3. Section 51 of the Public Demands Recovery Act is challenged as being ultra vires, as offending the provision of Article 14 of the Constitution. The way that this point has been argued is as follows : It is said that u/s 51 of the P. D. B. Act, if the order is made by an Assistant Collector or a Deputy Collector or by a Certificate Officer not being a Collector, then an appeal

lies to the Collector. Where however an order is made by a Collector, then only one appeal will lie to the Commissioner u/s 53, the Collector may revise any order passed by an officer subordinate to him. The Commissioner may revise any order passed by the Collector and the Board of Revenue may revise any order passed by Commissioner. It is pointed out that if an order is made by a certificate officer not being a Collector then there will be one appeal to the Collector and this is final, subject however to revision by the Commissioner and the Board of Revenue. Where, however, an order is made by a Collector, there is an appeal to the Commissioner whose order may be revised by the Board of Revenue. It is said that a person whose case is heard by an Assistant Collector or an officer subordinate to the Collector is placed in a superior position, to a person whose case is heard by a Collector. It is said that this is discriminatory inasmuch as two different kinds of reliefs are being prescribed for the same class of persons. I am unable to appreciate this argument. If a person is heard in the first instance by an officer subordinate to the Collector, he has an appeal to the Collector subject to revision by the Commissioner and subject to further revision by the Board of Revenue. , In case where the Collector hears the party in the first instance, there is an appeal to the Commissioner which is subject to revision by the Board of Revenue. The object in giving a right of appeal is that the findings of the lower Court may be subject to further scrutiny by a higher Court. There is, however, no vested right in anybody as to how many appeals should be provided. There is no rule that a particular kind of assessment should be taken by the Collector or by any officer subordinate to him. It appears that in either case, parties can go up to the ultimate authority, namely, the Board of Revenue. In my opinion it is no discrimination if in a given case the party cannot avail himself of the services of an inferior Court: there might have been some point if an assessee was deprived of the services of the higher Court.

22. Lastly, I come to point No. 4. Under the provisions of Section 46(5A), Income Tax Act, an Income Tax Officer may at any time, by a notice in writing, require any person from whom money is due or may become due to the assessee, to pay to the Income Tax Officer the same, to the extent that any tax or other moneys were due. In this particular case, notices have been served upon banks and other persons from whom moneys are due to the petitioner, requesting them not to pay the same to the petitioner but to pay the same to the Income Tax Officer in liquidation of the amount payable by the petitioner to the Income Tax Officer. Mr. Mitra argues that Income Tax authorities cannot take recourse simultaneously to certificate proceedings and to proceedings u/s 46(5A). He argues that these are two alternative rights, and it is only open to the Income Tax Officer to proceed under the one or the other. It is argued that once the Income Tax Officer has taken action u/s 46(2) of the Income Tax Act, and forwarded to the Collector a certificate, he has lost seisin over the matter and can no longer proceed under the provisions of Section 46 (5A). It is said that even if the seisin be an administrative one, still, once the matter is sent to the Collector for taking certificate proceedings, the Income Tax Officer had lost administrative seisin over

the matter, and until the certificate proceedings have concluded, there is no scope for the application of the provisions of Section 46(5A)., Reference was made to the case of Union of India (UOI) and Another Vs. Elbridge Watson, (G), where it was held that the issue of a notice u/s 46 (5A) was not a judicial or quasi-judicial act but an administrative one. Mr. Meyer concedes that it is an administrative act, but argues that the Income Tax Officer has not parted with administrative seisin simply because he has set in motion the machinery of certificate proceedings. Mr. Mitra has referred to the commentary of Section 46, contained in "Law of Income Tax in British India" by Dr. Radha Benode Pal. At page 1397 of the first edition, Dr. Pal has given the opinion that as soon as the Income Tax Officer has communicated to the chief officer in charge of the revenue administration that there was an item of revenue still outstanding his duty ended. It is stated that there was no provision which would authorise him to take any further additional steps for recovery after forwarding such certificate to the Chief Officer. "In any case", says the learned author, "multiple simultaneous proceedings in recovery should be avoided as tending to be oppressive", While the opinion of Dr. Pal on question of income-Lax Law deserves the highest respect; it must be borne in mind that the opinion was given at a time when Section 46 did not contain the provision in question, namely, Section 43 (5A). Now that there is a specific provision, it must be held that there is statutory power given to the Income Tax Officer to take action in preventing moneys due to the defaulting assessee being paid to him. With great respect, I do not see how such simultaneous proceedings can now be called oppressive. I am unable to accept the argument that upon certificate proceedings being initiated, the Income Tax officer loses administrative seisin over the matter. The provisions of Section 46(5A) appear to me to be very wide. The Income Tax Officer may not only require a person to pay money which has become due but he can also require him to pay money which may become due or subsequently become due. I do not think that such a result could be achieved in certificate proceedings. In such proceedings, moneys which had become due might possibly be attached u/s 14, Public Demands Recovery Act, but not moneys which may become due. Since such a power has been given to the Income Tax Officer, but not under the Public Demands Recovery Act, it seems to me that it was clearly intended that the exercise of power under the one Act does not exclude the exercise of power under the other. I do not question the soundness of the general principle enunciated by Dr. Pal that proceedings should not be taken against assessee which are oppressive. Where, however, moneys are or may become due to a defaulting assessee and express provision is made in the Statute granting power to the Income Tax Officer to proceed against the same, the exercise of such power cannot be said to be oppressive. Mr. Mitra has argued, that a taxing statute should be construed in such a manner as will work the least possible hardship to the assessee. This statement of the law is quite correct, but where an express power is conferred by statute it is not open to the Courts to interpret it in such a manner as to take away that power. I am unable, therefore, to hold that because of the pendency of the certificate proceedings, the Income Tax

Officer was not entitled to proceed under the provisions of Section 46 (5A) of the Income Tax Act.

23. The result is that all the points put forward have failed and the petition must be dismissed. The rule is discharged and all interim orders vacated. There will be no order as to costs.