

(1979) 02 CAL CK 0006
In the Calcutta High Court
Case No : Civil Rule No. 7841 (W) of 1975

Lakshmi Narayan Prasad Bhagat

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Bengal Agricultural Income Tax Act, 1944 — Section 24(1), 24(2), 38(1), 45(3)

Citation : (1979) 118 ITR 454

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Nanda Lal Pal and Rabindra Nath Sil, for the Appellant;None, for the Respondent

Judgement

M.N. Roy, J.—Admittedly, the petitioner was and is chargeable to tax under the Bengal Agrl. I.T. Act, 1944 (hereinafter referred to as the said Act). For the assessment years 1965-66, 1966-67, 1967-68, 1968-69, 1969-70, 1970-71 and 1971-72, there were certain proceedings initiated against him under the said Act and demands were raised. Those demands, not having been duly satisfied, certificate proceedings were also initiated and they have also been determined against the petitioner. The notices meant for the assessment years as above, which were required to be served on him in terms of Section 24(1) or (2) of the said Act and the Rules framed thereunder, were never or not at all served on him duly. As such, the petitioner has stated that he has no knowledge or intimation of the proceeding and so also was the best judgment assessment made and completed u/s 38(1) of the said Act, which was followed by, as mentioned hereinbefore, the initiation of certificate proceeding u/s 45 of the said Act, Mr. Pal, appearing in support of the Rule, has contended that under the provisions of the said Act and the Rules framed thereunder, it was the obligation of the appropriate authorities, who are respondents herein, to serve the notice u/s 24(1) or 24 of the said Act or at least make an attempt to have such notice served on the petitioner duly and personally before such notice, as mentioned in the affidavit-in-opposition, was served by affixation. It was contended by him

that the service by affixation at the first instance, as was done in the instant case, and which has been admitted in the affidavit-in-opposition as filed, was improper. The same arguments were advanced by Mr. Pal in respect of the notices in respect of the certificate proceeding and in fact it appears from the averments made in the affidavit-in-opposition as filed by the answering respondents that they were also served by affixation. It was also contended by Mr. Pal that even if the assessee, in this case, the petitioner, had not filed his return of agricultural income pursuant to a general notice in the newspaper under the said Act, it was not permissible for the authorities concerned to proceed in the manner in which they have done and to make best judgment assessment. In support of such statements, he relied on the determinations in the case of State of Assam and Another Vs. D.C. Choudhuri and Another, . Mr. Pal also contended and that too on a reference to the determination in the case of Rameswar Sirkar Vs. Income Tax Officer, "A" Ward and Others, , that since the procedures as laid down in the statute or the rules framed thereunder, have not been followed in the matter of effecting service of the concerned notice duly, the proceedings as initiated and completed cannot be allowed to be sustained.

2. The respondents have filed an opposition dated 15th May, 1976, in which they have admitted the fact of service of the notices by affixation. But their defence is that service in such manner was possible and permissible in view of the fact that the petitioner had not acted or taken steps in terms of the general notice as issued in the newspaper. Since the Supreme Court in the case of State of Assam v. D.C. Choudhuri [1910] 76 ITR 706 has observed to the contrary, the defence as put forward by the respondents appear to me to be without any substance.

3. Thus, when admittedly there was no due and proper service of notices at any stage of the proceeding, be it at the initial stage or at the stage, of the certificate proceeding, this rule should be made absolute and I order accordingly. The rule is made absolute. Let appropriate writs be issued. There will be no order as to costs. This will not, however, prejudice the respondents from proceeding afresh in the matter and to make appropriate determination in accordance with law, if they are so entitled and are advised.

4. While issuing the rule on 7th March, 1975, the court had directed the petitioner to deposit a sum of Rs. 500. Mr. Pal has mentioned that by challan No. 268 of 13th May, 1975, such deposit has been made. The office is required to check up the fact whether such deposit has been made and to make a report.