
(1957) 03 KL CK 0017

In the High Court Of Kerala

Case No : Original Petition No. 98 of 1956

M. Velayudhan

APPELLANT

Vs

Additional Income Tax Officer, Trivandrum

RESPONDENT

Date of Decision : 19-03-1957

Acts Referred:

Finance Act, 1950 — Section 13
Finance Act, 1966 — Section 13
Income Tax Act, 1922 — Section 46, 46(1)

Citation : (1957) 32 ITR 724

Hon'ble Judges : Joseph, J

Bench : Single Bench

Judgement

Joseph, J.—This is an application for the issue of a writ of certiorari or other appropriate writ quashing certain orders passed by the respondent, the Additional Income Tax Officer, Trivandrum. The petitioner was assessed to Income Tax for the years 1123, 1124, 1950-51, 1951-1952, 1952-53, and 1953-54. Of these, the assessments for the years 1123 and 1124 were under the Travancore Income Tax Act XXIII of 1121 and the rest under the Indian Income Tax Act. The respondent sent certificates to the Collector, Trivandrum, u/s 66 of the Travancore Act and 46 of the Indian Act for realisation of the tax and some amounts were paid by the petitioner towards the same. On 17th September, 1955, the respondent passed six orders imposing penalty for non-payment of the tax under the respective orders of assessment and the amounts thus ordered to be paid are stated in paragraph 7 of the petitioners affidavit. According to the petitioner the respondent had no jurisdiction to impose such penalties as he had issued certificates to the Collector for realisation of the tax. This is the main ground on which the orders are sought to be quashed. The respondent has filed a counter-affidavit stating that he did not lose jurisdiction by the issue of certificates to the Collector and that the imposition of penalty is not one of the modes of recovery of tax. According to him, he has jurisdiction to impose penalty so long as default continues.

2. The main question arising for decision is whether the Income Tax Officer had jurisdiction to impose penalty when once he had issued a certificate to the Collector. The argument advanced on behalf of the petitioner is that imposition of penalty u/s 46(1) of the Indian Income Tax Act and section 66(1) of the Travancore Act is a mode of recovery of tax and that the Income Tax Officer cannot concurrently pursue more than one mode of recovery. The argument that imposition of penalty is a mode of recovery of tax cannot be accepted. I have pointed out in my order in O.P. No. 74 of 1955 that although the power to impose penalty forms part of section 46 which deals with the "time and mode of recovery of tax", it cannot be treated as a mode of recovery of tax and that sub-sections (2) to (6) of section 46 alone deal with modes of recovery. The same view was expressed by my learned brother Varadaraja Iyengar, J., in *Mathew v. Second Additional Income Tax Officer*. Even assuming that the power to impose penalty is a mode of recovery of tax, the petitioner cannot succeed because there is nothing either in section 66 of the Travancore Act or in section 46 of the Indian Act as it stood before it was amended in 1953 by the addition of an Explanation, which prohibits resort to more than one mode of recovery at the same time. So far as the Indian Act is concerned, the explanation has removed the doubt whether the several mode mentioned in the section are mutually exclusive. Learned counsel wanted the imposition of penalty for the years 1123 and 1124 to be treated on a different basis as the assessments were governed by the Travancore Act which did not contain a similar explanation. The absence of the explanation is immaterial because the explanation merely clarified the position according to the original section and did not amend it. The power to pursue concurrent modes of recovery was not one conferred for the first time by the explanation. The explanation makes this clear.

A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income Tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode.

3. The argument based on the provisions of the CPC relating to simultaneous executions of decrees in more jurisdictions than one or concurrent modes of execution in the same Court has no force as the question has to be decided on the wording of the relevant sections in the Income Tax Act.

4. Another point urged on behalf of the petitioner is that the State Act having been repealed by the Finance Act of 1950 except as regards assessment, levy and collection of tax under the Travancore Income Tax Act in respect of the

period specified, the imposition of penalty in respect of assessments for the years 1123 and 1124 is without jurisdiction. Penalties in respect of these assessments were imposed only on 17th September, 1955. The question is whether the power to impose penalty u/s 66 of the Travancore Income Tax Act was kept in force when the said Act was repealed by the Finance Act. It is contended on behalf of the respondent that the power to impose penalty is included in the power to "levy, assess and collect" tax under the repealed Act. It was pointed out that a somewhat similar question arose in *Lekshmana Shenoi v. Income Tax Officer, Ernakulam*, and that it was held by a Full Bench of the Travancore-Cochin High Court that the expression "assessment" in section 13 of the Finance Act included "re-assessment." This decision cannot be treated as an authority for the position that the power to impose penalty comes within the scope of the expression "levy, assess and collect tax." The imposition of penalty is a punishment for default in payment of Income Tax within the time specified in the order of assessment. The scheme of the Act shows that tax and penalty are kept distinct, although the mode of collection of tax is made applicable to the collection of penalty. In other words, levy, assessment and collection of tax can be completed without the imposition of penalty. The mere fact that penalty is the punishment for default in payment of tax is insufficient to bring the power to impose such punishment within the scope of the expression "levy, assess and collect tax." If the imposition of penalty is a mode of collecting tax the position taken up by the respondent may have some force. I have already held that it is not. The omission in the Finance Act to save the provision regarding the power to levy penalties on defaulters under the repealed State Acts may be an accidental omission but the petitioner is entitled to take advantage of the same. As the saving in section 13 of the Finance Act relates only to taxes and not to penalties I hold that the order imposing penalty for non-payment of tax for the years 1123 and 1124 are without jurisdiction. The orders imposing these penalties must, therefore, be quashed.

5. In the result, the penalties in respect of the assessment years 1123 and 1124 are quashed. The other orders are valid and the prayer to quash the same is dismissed. The petition is allowed only to the extent indicated above, viz., the penalties in respect of assessment years 1123 and 1124, and is dismissed in other respects. In the circumstances, there will be no orders as to costs.

Petition allowed in part.