
(1955) 06 CAL CK 0045
In the Calcutta High Court
Case No : Civil Rule No. 1106 of 1954

Metropolitan Structural Works Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-06-1955

Acts Referred:

Income Tax Act, 1922 — Section 29, 47(7)

Citation : AIR 1956 Cal 396 : (1955) 28 ITR 432

Hon'ble Judges : Chakravartti, C.J.; Lahiri, J

Bench : Division Bench

Advocate : Amaresh Chandra Roy and Kishore Mukherjee, for the Appellant; E.R. Meyer and B.L. Pal, for the Respondent

Judgement

Chakkavartti, C.J.—The short point involved in this case is a point of limitation. It appears that the petitioner was assessed to a certain amount of tax and in respect of the amount so assessed, a demand notice was issued on 29-9-1948. The petitioner appealed against the assessment and the Appellate Assistant Commissioner ordered a reduction of the tax. Thereupon a fresh notice of demand in respect of the sum to which the tax was reduced was issued on 14-10-49. The petitioner was still not satisfied & preferred a further appeal to the Tribunal. He was again successful and the tax assessed on him was further reduced. Thereupon, a third notice of demand in respect of the amount of which the tax was finally reduced was issued on 31-3-1952.

2. Thereafter, the Income Tax Officer took action u/s 46(2) of the Act and sent a certificate to the Collector. The petitioner raised an objection that the proceedings initiated by such certificate were barred by limitation, inasmuch as according to him, the period of "one year from the last day of the financial year in which any demand is made under this Act", contemplated by Sub-section (7) of Section 46 of the Act, was to be computed by reference to the first of the notices of demand, that is to say, the notice issued on 29-9-1948. There can be no question that if the period of one year was to be computed from 29-9-1948,

the proceedings initiated in the present case were clearly time-barred.

3. The Certificate Officer overruled the petitioner's contention. Thereafter, he moved this Court and obtained the present Rule.

4. In support of the Rule, Mr. Roy contended that Section 29, Income Tax Act which provided for the issue of a notice of demand did not provide either expressly or by implication that upon an assessment being revised either by the Appellate Assistant Commissioner or by the Income Tax Appellate Tribunal, a fresh notice of demand could be issued. In course of his argument he modified the contention to a certain extent and submitted in the end that although there might not be any prohibition in Section 29 against issuing a fresh notice of demand after an assessment had been revised, it was not necessary that such a fresh notice should be issued. I may say at once that if the last be the contention of Mr. Roy, his client must obviously fail, because if the third notice of demand, as issued in the present case, is not prohibited by law, there is no reason why the period of limitation relative to it should not be computed from the last day of the financial year in which it was issued.

5. The real point, however, is whether a second or third notice of demand is at all permissible u/s 29, even when an assessment is altered in a first or a second appeal. It appears to me that the necessity of issuing a fresh notice of demand in such circumstances is beyond argument. Suppose the amount of tax assessed by the Income Tax Officer is Rs. 2,000/- and a notice of demand is issued in respect of that amount. If the assessee appeals and the assessment is reduced to say Rs. 1500/-, the notice of demand already issued in respect of Rs. 2,000/- will clearly cease to be appropriate. Similarly, if the assessee appeals again and the assessment is further reduced, the intermediate notice of demand issued in respect of the sum assessed by the Appellate Assistant Commissioner will again cease to be appropriate and the necessity for issuing a fresh notice will again arise. Such being the necessity in actual fact, the next question is whether the necessity has been recognised by the section and whether the language of the section warrants such successive notices. In my view, the answer to that question can only be in the affirmative. The words with which Section 29 opens are:

"When any tax, penalty, or interest is due in consequence of any order passed under or in pursuance of this Act."

It is noticeable that the section does not say "in consequence of any assessment order", but says "in consequence of any order." Such order is an order "passed under or in pursuance of this Act" and it can hardly be disputed that an order passed by an Appellate Assistant Commissioner or an order passed by an Appellate Tribunal is also an order passed under or in pursuance of the Income Tax Act. If so, when there is some tax due in consequence of an order passed by the Appellate Assistant Commissioner or in consequence of an order passed by the Appellate Tribunal, a clear occasion arises under the words of the section to

serve a notice of demand upon the assessee. That such fresh notice should be issued when the assessment is altered is but commonsense and I see no reason to construe the section against reason and against the actual necessities of realization.

6. Mr. Roy contended that although Section 46(7) spoke of "any demand" made under the Income Tax Act, it gave no authority to the Income Tax authorities to make successive demands, because were such liberty to be conceded to them, they could save limitation for themselves by issuing fresh notices of demand in respect of the same amount assessed by the same order. It need only be said that such is not the position in the present case. If ever in Income Tax Officer, after having issued a notice of demand in respect of an amount due under his own order or an order of a higher authority, issues a second notice of demand in respect of the same amount due under the same order, it will have to be considered whether he is entitled to do so and I have no doubt whatever what the answer will be. But the present case is not of that description. Here, an alteration had been made in the assessee's liability by first, the Appellate Assistant Commissioner and then by the Income Tax Appellate Tribunal and there was clearly no repetition of a notice of demand in respect of the same amount due under the same order, but a notice of demand in respect of a fresh or an altered liability.

7. In my view, the contention urged on fee-half of the petitioner is not tenable.

8. The Rule is accordingly discharged with costs -- the hearing fee being assessed at two gold mohurs.

9. Ad interim stay will stand automatically vacated.

Lahiri, J.

10. I agree.