

(1955) 10 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 118 of 1955

M.M. Mathew

APPELLANT

Vs

2nd Addl. Income Tax officer and Others

RESPONDENT

Date of Decision : 31-10-1955

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3
Income Tax Act, 1922 — Section 28(1), 29, 46, 47

Citation : AIR 1955 Ker 184

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : P. Govindan Nair, G.B. Pai, K.V.R. Shenoi, P.K. Kurien and P.M. Alexander, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

Varadaraja Iyengar, J.—This is a petition under Article 226 of the Constitution by an Assessee under the Income Tax Act. The Petitioner who was a businessman at Kottayam had been assessed to income tax in particular sum for the year 1952-53. A penalty of Rs. 13,000/- was also imposed upon him u/s 28(1)(c), Income Tax Act for wilful manipulation of accounts and suppression of income.

The tax assessed was cleared by the Petitioner in instalments but because he defaulted to pay up the penalty amount a notice of demand u/s 29 was issued and a further penalty of Rs. 1800 was imposed against him. For the realisation of the two sums of Rs. 18,000 and Rs. 1800, proceedings were initiated by Respondent 1 Income Tax Officer through Respondents 3 and 2 District Collector and Tahsildar at Kottayam respectively under the Travancore-Cochin Revenue Recovery Act 7 of 1951.

According to the Petitioner the Travancore-Cochin Revenue Recovery Act is intended only for the recovery of State revenue and could not be utilised for the recovery of Central revenue e.g., Income Tax dues and the procedure adopted by the Respondents for the realisation of the tax dues was accordingly illegal and

without jurisdiction.

Petitioner also canvasses the validity of the imposition under the Income Tax Act of the penalty for non-pay merit of a penalty. The prayer is therefore made in the petition for issue of a writ of certiorari and/or other appropriate writ to quash the proceedings concerned.

2. The petition is contested by the Respondents. They seek to uphold both the imposition of further penalty of Rs. 1800 and the resort to the State Revenue Recovery Act for purpose of recovery.

3. The first question arising for consideration is whether there is any illegality in applying the State Revenue Recovery Act for purposes of realising Income Tax arrears arising within the State jurisdiction, Recovery of tax and penalties is provided for in Chapter 6, Income Tax Act. Section 46 in that Chapter provides for the mode and time of recovery. Clause (2) of that section says:

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

Section 47 of the Act provides for recovery of penalty and interest in the same manner as arrears of tax. The expression "Collector" is not defined in the Income Tax Act. We have therefore to apply the, definition given in Section 3(ii) of the General Clauses Act, 10 of 1897 as follows:

Collector" shall mean, in a presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district.

The word "Collector" is defined in the Travancore-Cochin Revenue Recovery Act also as the Chief Officer in charge of the revenue administration of the district.

4. Mr. Govindan Nair, learned Counsel for the Petitioner says that the Collector appointed by the Travancore-Cochin Government is only a State servant and not a Central Official and that therefore his services cannot be requisitioned for purposes of enforcement of the provisions of a Central Act, that is to say, he cannot be a functionary within the meaning and purpose of a Central enactment.

Mr. Rama Iyer, learned Counsel for the Income Tax department refutes this suggestion and refers to Section 62, Travancore-Cochin Revenue Recovery Act which provides for the applicability of the provisions of that Act for the recovery of certain arrears of revenue other than land revenue and particularly.

all sums declared by any other law far the time being in force to be recoverable as arrears of public or land revenue.

The argument is that Section 46, Clause (2) provides for the recovery of Income Tax as arrears of land revenue within the meaning of this sub-clause.

5. Now it may be seen that Section 46, Clause (2), Income Tax Act does not prescribe the machinery which the Collector has to employ for purpose of recovery. There is also no restriction or qualification in the use of the expression "Collector", whether with reference to the agency which employs him or otherwise. The object of the provision would appear to be to realise arrears of tax and to realise them effectively and swiftly.

The section, in my judgment, attracts by virtue of its own force the provisions of different local Acts in different States. The State legislation applies because of the provisions in the Central Act. There existed in different components of the Union local laws and an elaborate machinery to realise arrears of land revenue. For realising, arrears of tax the Central Legislature has chosen to utilise the existing law and the existing machinery in these particular areas and that is all. It follows therefore that no question of illegality or want of jurisdiction arises in the matter.

6. The next question is as to the validity of the imposition of penalty upon penalty. The imposition of penalty is provided for in Section 46 Clause (1) which runs as follows:

Where an Assessee is in default in making payment of Income Tax, the Income Tax Officer may in his discretion direct that in addition to the amount of arrears a sum not exceeding that amount shall be recovered from the Assessee by way of penalty.

Now for the purpose of the Income Tax Act, Income Tax, penalty and interest have been viewed Independently of each other. See for example Section 29 which deals with notice of demand in respect of tax, penalty or interest. So it is urged that the absence of specific provision in regard to penalty in default corresponding to Section 46 Clause (1) dealing with tax default, is sufficient for the argument that the Act does not contemplate the same i.e., there can be no imposition of a penalty under the Act if a penalty already imposed is defaulted.

Learned Counsel for the Respondents says that Section 46 deals generally with the modes of recovery and Clause (1) thereof which provides for the imposition of a penalty must be taken to indicator one of such modes and to the extent that that provision is applicable to arrears of tax it must also be applicable to the same extent for penalties as well and he refers to Section 47 which says that penalty shall be recovered in the same manner as arrears of tax.

It seems to me that the argument though ingenious is not well-founded. For Section 46 Clause (1) does not in fact deal with a mode of recovery at all. The modes of recovery are dealt in Sub-section (2) onwards as follows:

- (i) as if they were arrears of land revenue (see Sub-section (2))
- (ii) as under the CPC for the execution of a decree (see proviso to Sub-section (2))

(iii) as for recovery of arrear of municipal tax or local rate (see Sub-sections (3) and (4))

(iv) as for recovery by State Government to which the matter is entrusted (See Sub-section (6))

(v) by way of deduction from salary (see Sub-section (5))

(vi) as by way of collection from garnishees (see Sub-section (5) (a))

It is impossible to consider that the imposition of penalty is also a mode of recovery of tax. It follows therefore that Respondent 1 Income Tax Authority was acting without jurisdiction in imposing the penalty of Rs. 1800 for the default in payment of the penalty of Rs. 18,000 already imposed.

7. I therefore allow the petition to the extent it seeks relief in respect of the imposition of the penalty on penalty. That is to say, a writ of certiorari will issue quashing the order filed in the case as Ex. C imposing the penalty of Rs. 1800 and also the notice of demand therefore filed in the case as Ex. D. The petition will stand dismissed to the extent it prayed for quashing the notice of demand Ex. B with respect to the penalty amount of Rs. 18,000/-. The parties will suffer their costs in the circumstances of the case.