(1968) 11 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 1785 of 1967

Mrs. N. Savithri Sam APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 14-11-1968

Acts Referred:
Income Tax Act, 1961 — Section 220(6)

Citation : (1969) 72 ITR 730 : (1969) 82 LW 205

Hon'ble Judges : Veeraswami, J;Ramaprasada Rao, J

Bench : Division Bench

Advocate : K. Ramagopal, for the Appellant; V. Balasubrahmanyan and J. Jayaraman, for the Respondent

Judgement

Veeraswami, J.—This petition is to direct the Income Tax Officer, Central Circle I, Coimbatore, to consider the application dated June 12,

1967, of the petitioner u/s 220(6) of the Income Tax Act, 1961. On May 17, 1967, the Income Tax Officer communicated to the petitioner that,

having regard to his representation to the Commissioner of Income Tax on April 9, 1967, in regard to the payment of tax, the Income Tax Officer

was prepared to stay the collection of the tax in dispute in the appeal, if he paid one-half relating to the assessment year 1961-62 before May 25,

1967. The Income Tax Officer added that, if the petitioner defaulted, even the limited stay would be deemed to be withdrawn. On June 12, 1967,

the petitioner applied to the Income Tax Officer and stated that as soon as a piece of land mentioned therein was sold, he would realise Rs.

25,000 and pay the same over towards the tax arrears immediately. The petitioner further stated that the Income Tax Officer should bear with his

difficulties and consider his case sympathetically. In the meanwhile, it appears, a representative of the petitioner met the Income Tax Officer and

explained his difficulties. Noting that the petitioner did nothing thereafter, the Income Tax Officer intimated to the petitioner that the terms of his

earlier letter dated May 17, 1967, could not be altered but he was prepared to give time for payment till June 12, 1967, and if there was no

payment there would be no stay.

2. Until June 12, 1967, there was thus no application before the Income Tax Officer himself to exercise his power u/s 220(6). The letter of the

Income Tax Officer dated May 17, 1967, naturally, therefore, embodied only the direction of the Commissioner of Income Tax, which was given

on the representation directly made to the Commissioner by the petitioner. But the order of the Income Tax Officer dated June 6, 1967, extending

the time for payment of one-half of the disputed tax till June 12, 1967, was obviously in exercise of his own power u/s 220(6). But what is

complained against in this petition is that the correspondence we have referred to shows that the Income Tax Officer was under the impression that

the Commissioner having passed an order he had no alternative but to follow it. Our attention has been invited to paragraph 4 of the counter-

affidavit where the position taken up is that, while the Income Tax Officer would have been the proper authority to be approached for stay, and

not the Commissioner himself, when once the petitioner approached the Commissioner and the latter made an order, it was the duty of the Income

Tax Officer to carry out the Commissioner''s orders and not to vary them. On this basis the revenue proceeds in the counter-affidavit to say that,

that being the position of the Income Tax Officer, no mandamus can issue to him. We are of the view that this is not a correct stand to take. The

jurisdiction of the Income Tax Officer u/s 220(6) is quasi-judicial and has been exclusively entrusted to him by the statute. It follows, therefore, that

he has got a duty to apply his own mind to the question of grant of stay, not controlled in such exercise by any direction or guidance by any higher

authority including the Commissioner. It is true the Commissioner of Income Tax is higher up in the hierarchy of officials of the Income Tax

department and as such he has got administrative jurisdiction over all his subordinates. That can enable him only to give such administrative

directions as are not prohibited or impliedly forbidden by the provisions of the

Act. Where an Income Tax Officer is entrusted with a quasi-judicial

function, no direction can be given to him by the Commissioner in exercise of his administrative superiority. Even if there is such a direction given

by the Commissioner, however embarrassing it may be for the Income Tax Officer, it is his statutory duty to consider the question of stay by

applying his own uncontrolled mind and express his view which will be embodied in his order. It may be, in going through that process, he may

eventually agree with the Commissioner. But it should not appear that he merely carried out the orders of the Commissioner. That being the

position, even if the Commissioner is moved in the first instance by a party, he may as well direct the party to move the Income Tax Officer having

jurisdiction in the matter and not forestall and thus give a handle to an assessee to aver that the Income Tax Officer has not functioned himself u/s

220(6).

3. But in this case we are satisfied that the Income Tax Officer was not guided by the directions of the Commissioner but merely communicated his

directions to the petitioner and later, when he found that the directions had not been complied with, he himself extended the time for payment. The

application of the petitioner dated June 12, 1967, does not appear to be one u/s 220(6), Actually it did not ask for any stay on any terms but only

wanted the Income Tax Officer to appreciate his difficulties and be sympathetic towards him. We consider, therefore, that there being no

application properly filed before the Income Tax Officer u/s 220(6), no mandamus is called for. It will be open to the petitioner to apply even at

this stage u/s 220(6). The petition is dismissed but with no costs.

