(1981) 09 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1944 of 1981

Nand Lal — APPELLANT

Vs

Tax Recovery Officer, Range-II and Another — RESPONDENT

Date of Decision : 11-09-1981

Acts Referred:
Income Tax Act, 1961 — Section 189(3)

Citation : (1982) 30 CTR 327 : (1982) 135 ITR 176

Hon'ble Judges : M.R. Sharma, J;M.M. Punchhi, J

Bench : Division Bench

Advocate : S.S. Mahajan and N.K. Jain, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

1. A grievance has been made in this petition that on the basis of the tax liability against a firm, an individual partner cannot be made liable. It is further submitted that pursuant to a tax recovery certificate issued against a firm the tax cannot be realised from an individual partner.

2. So far as the first point is concerned, it deserves to be answered against the petitioner in view of Section 189(3) of the I.T. Act, because that provision clearly lays down that a partner is liable to meet the tax liability of the firm.

3. There is, however, some merit in the second submission made by Mr. Mahajan. In the instant case, the tax recovery certificate has been issued against the firm only and not against the individual partner/partners of the firm. It is not disputed that if the partner or the partners are not able to meet the liability, then they can be sent to civil prison in execution of that certificate. In such a case, the citizen is likely to be put into jail pursuant to a tax recovery certificate wherein his name is not mentioned. We, therefore, accept the second contention and hold that an individual partner cannot be proceeded against on the basis of a tax recovery certificate issued in the name of the firm. It shall, however, be open to the department to issue such a certificate against the petitioner or his co-partners for making the impugned recovery.

4. With the aforementioned observations, the petition stands disposed of.

