
(2001) 03 MAD CK 0040
In the Madras High Court
Case No : Writ Petition No. 3570 of 1996

Noorudin

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Income Tax Act, 1961 — Rule 66, 68B, 68B(2)

Citation : (2001) 171 CTR 78 : (2001) 251 ITR 357 : (2002) 121 TAXMAN 10

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : P. Radhakrishnan, for V. Sairam, R. Amizhdhu and R. Thazhalan, for the Appellant; Chitra Venkataraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—Rule 68B in Schedule II to the Income Tax Act, 1961, introduced with effect from June 1, 1992, is imperative, and

specifies the exact period available to the Revenue, to hold the sale of property attached for recovery of arrears of tax, interest, fine/penalty or any

other sum ; the period by which it may be extended ; the period which is to be excluded while computing the period specified in Sub-rule (1), and

also sets out the consequence of not holding the sale within the period allowed by the rule.

2. The consequence is that whatever might have happened or might have been done by an assessee or by the Revenue, if the sale is not held within

the period specified in Rule 68B, after excluding the period specified in Rule 68B(2), the sale cannot be held after the expiry of that period of

limitation specified therein and any order of attachment that might have been issued shall be deemed to have been vacated.

3. Tax Recovery Officers are, therefore, required to be extremely alert and take

steps promptly within the time frame provided in the rule. Any failure to do so will result in the Department being disabled from proceeding against the immovable property which might have been attached for recovery of the arrears due to the Revenue.

4. Rule 66 in the same Schedule empowers the Tax Recovery Officer to postpone the sale to enable the defaulter to raise the amount due under a certificate, if the defaulter satisfies the Tax Recovery Officer that there is no reason to believe that the amount of the certificate may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter. The Tax Recovery Officer may in such circumstances, on the application of the defaulter, postpone the sale on such terms and for such period as he thinks proper, to enable the defaulter to raise the amount.

5. Rule 66, however, does not enable the Tax Recovery Officer to postpone the sale beyond the period of limitation specified in Rule 68B or to compute a fresh period of limitation from the date on which the defaulter requested for postponement. While granting postponement, the officer, acting under Rule 66, must necessarily have regard to Rule 68B and ensure that the sale, if required to be held, will be held within the period prescribed in Rule 68B. The limitation prescribed under Rule 68B cannot be extended by the Tax Recovery Officer granting a long postponement of the sale on an application by the defaulter.

6. The rules in Schedule II do not anywhere provide for the enlargement of the period of limitation for the sale of the immovable property of the defaulter on a request being made by the defaulter to postpone the sale. A request for postponement of the sale is not equated to an acknowledgment of the liability, so as to enable the Revenue to compute a fresh period of limitation. This is so because, after the demand against the defaulter has become conclusive or final, the admission or denial of the defaulter is wholly irrelevant to the enforcement of the demand. The defaulter is bound by the demand and the Revenue is entitled to enforce the same.

7. The factual matrix in which the aforementioned rules are required to be applied in this case is that a proclamation of sale was issued on February 2, 1996, in respect of valuable immovable property, which had belonged to the

mother of the petitioner, who was a partner in a firm, Raja and Raja Beedi Factory. She died in 1984. The property inherited by her son was sought to be sold under the proclamation issued 12 years after her death, on the basis of a certificate issued by the Income Tax Officer, on March 28, 1991, for recovery of the sum of Rs. 6,53,759. The assessment years for which the tax was in arrears were not set out in the proclamation. It is, however, obvious that the amount must relate to a period prior to March 28, 1991. After this writ petition was entertained by this court, this court did not stay the sale, but had confined the stay to the confirmation of the sale. However, no sale has been held till date.

8. The Revenue has not filed any counter-affidavit. Counsel for the Revenue submitted at the Bar that, in the year 1988, an attempt had been made to sell the properties, but that the sale was set aside. It was also submitted by her that as late in the year 1995, the petitioner and the other erstwhile partners of the firm had promised to pay the monies. Counsel submitted that the promise made by them would entitle the Revenue to compute a fresh period of limitation from the date of the promise and if the period is so computed, apart from the proclamation issued being well within the period specified in Rule 68B further time won't be available to issue a fresh proclamation. It is not the case of the Revenue that the Tax Recovery Officer had granted any time or that he had made any order postponing the sale to a future date when the requests had been received.

Even if he had, that would not make any difference.

9. The rule appears to be a rigid one. The reason for the rigidity apparently is the need to ensure prompt recovery of the Revenue, by requiring the authorities concerned to take action within the period prescribed and not to tarry or be dilatory. The rule is not one which can be waived by the defaulter. The rule is not one which provides an option to the defaulter or to the Revenue. All parties are bound by the rule. Any sale of immovable property after the limitation prescribed therein would be clearly illegal and void.

10. A provision which requires the Revenue to act within the period prescribed by law cannot be construed in a manner which would enable the Revenue to act beyond that period unless the Act specifically so provides, especially where, as a result of such inaction on the part of the Revenue, the assessee or the defaulter is entitled to a benefit.

11. As no fresh proclamation can now be issued, the petitioner is entitled to a declaration that no new proclamation of sale of this property shall be issued pursuant to the certificate on the basis of which the impugned declaration had been issued, as also a declaration that the attachment also is deemed to have been vacated.