
(1955) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 147 of 1955

OM PRAKASH GUPTA

APPELLANT

Vs

Income Tax OFFICER, DEHRA DUN, AND ANOTHER.

RESPONDENT

Date of Decision : 12-09-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 29 ITR 495

Hon'ble Judges : Mehrotra, J

Bench : Division Bench

Judgement

MEHROTRA, J. - The applicant, Om Prakash Gupta, along with three others formed a partnership and carried on the business of supplying fire-wood and other articles to the Government in the Military Department in the name any style of Om Prakash & Bros. The other partners were Sri Kashi Nath of Dehra Dun, Sri Ram Chandra of Dehra Dun and Sri Beru Ram of Solan. All the partners had one-fourth share each. On March 18, 1949, the Income Tax Officer, Excess Profits Tax Circle, Kanpur, assessed the aforesaid firm in the status of an association of persons in respect of the business for the assessment year 1944-45 on an income of Rs. 2,07,451. On this excess profits tax amounting to Rs. 1,14,334 was demanded and an Income Tax was further levied on the balance of Rs. 93,117. The total liability came to Rs. 1,57,575. On appeal the assessment was set aside and the Appellate Assistant Commissioner directed fresh assessment to be made by his order dated June 13, 1950. In the meantime the partnership firm filed a suit against the Dominion of India in the Court of the Civil Judge, Dehra Dun, claiming certain amount of money against the Government. The suit was decreed on July 26, 1948, for a sum of Rs. 1,24,572 against the Dominion of India. The amount was deposited on behalf of the Dominion of India in the Court of the Civil Judge. The Income Tax authorities got the money attached. When the assessment was set aside by the Appellate Assistant Commissioner, the attachment ceased. On November 27, 1950, the applicant applied to the Commissioner of Income Tax requesting him to ask the

Civil Judge not to pay the amount in deposit and get the assessment expedited. On December 9, 1950, the Income Tax Officer, Dehra Dun, thereafter made an ex parte assessment on an income of Rs. 2,07,351; and excess profits tax amounting to Rs. 1,14,234 and an Income Tax amounting to Rs. 93,117 were levied. The decretal amount in deposit with the Civil Judge was again attached for the payment of the taxes and the Civil judge by his order of May 31, 1951, directed that out of the deposit of Rs. 1,24,572 a sum of Rs. 1,12,036-0-6 be paid to the Income Tax Officer. The second assessment was again set aside on an application made by the petitioner u/s 27 of the Income Tax Act on August 24, 1953, and a fresh assessment was made on the firm as on a registered firm on an income of Rs. 29,346. The Excess Profits Tax Officer, acting u/s 10A of the Excess Profits Tax Act, added to the firms income assessed as above the incomes of the two other firms in which the four partners of this firm were partners and made the final assessment by which the firm became liable to pay Rs. 54,026-10-0 as excess profits tax. After the amount of tax liability had been reduced to Rs. 54,026-10-0, the applicant applied to the Commissioner of Income Tax, U.P., on September 28, 1953, praying that out of the sum of Rs. 1,12,036-0-6 received by the Department through the Civil Judge, the Income Tax Officer directed to adjust the amount of Rs. 54,027 due against the firm and refund one-fourth of the balance to the petitioner after further setting off Rs. 1,703-4-0 the Income Tax due from the petitioner on his income as a partner. The applicant thus asked for a refund of Rs. 16,145-9-0 which was retained by the Department. The Commissioner of Income Tax wrote a letter to the petitioner that he had issued the necessary instructions to the Income Tax Officer, Dehra Dun. On December 5, 1953, the petitioner wrote to the Income Tax Officer, Dehra Dun, for the refund of the aforesaid amount. The Income Tax Officer did not reply to the letter of the applicant and the applicant thereafter approached the Central Board of Revenue. The Income Tax Officer refused to pay a sum of Rs. 16,000 and odd and the applicant was informed by the Income Tax Officer that he proposed to appropriate u/s 44 of the Income Tax Act the entire balance towards taxes due from the other partners in respect of their personal assessment.

On these facts the present petition has been filed under article 226 of the Constitution for the following reliefs :

- (a) A writ of mandamus directing the opposite parties not to pay the amount of Rs. 16,145-9-0 be issued.
- (b) A writ of prohibition directing the opposite parties not to appropriate the amount in the manner set out in paragraph 19 of the accompanying affidavit, be issued.

A counter-affidavit has been filed on behalf of the opposite parties in which it is stated that out of the total sum of Rs. 1,12,036-0-6, recovered from the Civil Judge, Dehra Dun, by the Department, the share of the applicant comes to Rs. 31,355-7-0. A sum of Rs. 27,013-5-0 was realised from the applicant on account

of excess profits tax demand against the firm in which he was a partner. A sum of Rs. 1,703-4-0 was due against the applicant on account of Income Tax demand in respect of the personal assessment which had also been adjusted. After adjusting the same, an amount of Rs. 2,638-14-0 due to the applicant was sent to the Civil Judge for payment to the applicant and it is open to the applicant to apply to the Civil Judge for the payment of the said amount.

In brief the contention of the applicant is that the share of the applicant in the amount which was realised by the Department out of the decretal amount comes to Rs. 31,000 and odd and the tax liability of the applicant is to the extent of one-fourth of Rs. 54,000 and odd, the amount of tax which was finally assessed by the Income Tax Officer, and after deducting the amount of tax which the applicant was liable to pay, he is entitled to a refund of Rs. 16,000 and odd. The contention of the Department, however, is that u/s 44 of the Income Tax Act, which applies to the excess profits tax liability also, it was open to the Department to realise the entire tax payable by the firm from the individual partners after the dissolution of the firm. It was, therefore, open to the Department to realise the entire sum of Rs. 54,000 and odd from the applicant. What the Department has done is that it has realised half of the amount of Rs. 54,000 and odd from the applicant and no objection can be taken by the applicant to the action taken by the Department. It is conceded by the applicant that in cases of subsequent dissolution of partnership, it is open to the Income Tax authorities to realise the tax due from the firm from the money belonging to the partners but the contention of the applicant is that section 44 only gives an additional power to the Income Tax authorities to safeguard their right to realise the dues from an assessed firm but if sufficient money belonging to the firm is available to the Department, section 44 cannot be utilised by the Department in realising the entire sum of money from the share of one of the partners alone and allow the shares of the other partners in the money belonging to the firm and in possession of the Department to remain unaffected. The argument appears to be attractive, but there is no justification on the plain language of section 44 of the Income Tax Act to limit the operation of section 44 to such cases and to urge that the power u/s 44 could only be exercised when sufficient amount belonging to the firm is not available to the Department from which the tax liability of the firm could be realised. The sum of Rs. 1,12,036-0-6, which was sent to the Department by the Civil Judge, either was the money belonging to the different partners to the extent of the Rs. 31,000 each from which it would be open to the Department to deduct the liability of the partners whether personal or as a partner of the firm u/s 44, or it was the money paid to the Department as an attaching creditor in liquidation of their debt. If the contention of the applicant is that as soon as a sum of Rs. 1,12,000 and odd was paid to the Department, the Department was holding the money on behalf of the assesseees and Rs. 31,000 and odd out of the said money was the money belonging to the applicant, then the Department, in my judgment, had power u/s 44 to deduct the entire liability of the applicant from the said amount whether the liability was

individual liability of the applicant for payment of the Income Tax or as a partner of a dissolved firm u/s 44 of the Income Tax Act, and it cannot be urged that the action taken by the Department was illegal. If the alternative argument put forward by the applicant that Rs. 1,12,000 and odd was sent to the Department by the Civil Judge in liquidation of the debt claimed by the Department for which they had obtained attachment of the amount lying in the custody of Civil Judge is accepted, then, in effect, the argument of the petitioner comes to this that as the claim of the Department has been reduced from Rs. 1,54,000 to Rs. 54,000 the attaching creditor can be asked to refund the balance of the amount which has been overpaid. This argument is no doubt correct but, in that event, the remedy of the applicant is not to come to this Court under article 226 of the Constitution as the balance amount lying with the Department is the amount which is deemed to be in the custody of the Civil Judge and as such no direction can be issued by this Court under article 226 of the Constitution to the Department to pay that money to the applicant. The remedy of the applicant would be to approach the Civil Judge for a direction that the attaching creditor, who has been paid an amount in excess of his claim under the order of the Civil Judge, be directed to refund this amount and such prayer, if made to the Civil Judge, will no doubt be considered by him in accordance with law, but the applicant is not entitled to any relief in this petition under article 226 of Constitution.

There is, therefore, no force in this petition and is dismissed. I make no order as to costs.

Petition dismissed.