

(1989) 12 CAL CK 0020
In the Calcutta High Court
Case No : Civil Revision No. 8662 (W) of 1978

Puranmal Rajkumar

APPELLANT

Vs

Tax Recovery Officer and Others

RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 226

Citation : (1991) 187 ITR 706 : (1991) 57 TAXMAN 177

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Devi Pal and M. Seal, for the Appellant; R.C. Prasad, for the Respondent

Judgement

Susanta Chatterjee, J.—The present rule was issued on November 7, 1978, at the instance of the writ petitioner, a partnership firm, challenging, inter alia, the proclamation of sale dated October 3, 1978, and all proceedings taken thereto and for quashing the same on the ground that the proclamation of sale being in execution of several certificate proceedings many of which relate to the individual tax liability of the partners of the registered firm, the respondents have no competence, jurisdiction and/or authority to realise the individual tax liabilities of the partners amounting to Rs. 1,25,082 from the property of the petitioner-firm. It is stated that there are six partners in the partnership firm, Messrs. Puranmal Rajkumar. It is stated that, for the assessment year 1966-67, the petitioner firm had been assessed by the Income Tax Officer and the total income was computed at Rs. 79,346 and there was imposition of penalty u/s 271(1)(a) of the Income Tax Act for late filing of the return and the penalty imposed amounted to Rs. 3,800. For the assessment year 1967-68, the petitioner firm was assessed by the appropriate Income Tax Officer and the income assessed amounted to Rs. 1,12,502. The penalty imposed was to the tune of Rs. 30,000. The petitioner preferred appeals against the said orders before the Appellate Assistant Commissioner of Income Tax and the Appellate Assistant Commissioner

confirmed the orders imposing penalty and, thereafter, the petitioner filed appeals against the orders of the Appellate Assistant Commissioner before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal by a consolidated order dated October 16, 1973, restored both the appeals to the file of the Appellate Assistant Commissioner of Income Tax so that he may dispose of the appeals giving opportunity to the petitioner and also to the Income Tax Officer. It is stated that the said appeals are still pending. It is further stated that the Income Tax Officer, thereafter, issued several certificates for the alleged non-payment of the demand which has been resisted by the petitioner firm. Pursuant thereto, the properties had been attached and steps were taken to sell the same. Being aggrieved, the petitioner has come to this court and has obtained the rule.

2. Dr. Pal, appearing for the writ petitioner, has argued at length contending that the steps taken by the Income Tax authorities to recover the dues are unwarranted and uncalled for. He has drawn the attention of the court to Sections 220, 222, 223 and 224(2) of the Income Tax Act and referred to this court as to this scope of recovery of the tax dues, and as to the jurisdiction of the Tax Recovery Officer. In support of his contention, he has referred to the cases in *Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad and Others*, , *Income Tax Officer, Agra Vs. Radha Krishan*, According to him, neither the Income Tax Officer nor the Tax Recovery Officer, by way of certificate proceedings against the partnership firm, can demand tax in respect of the share income of the partners which can be retained by the firm.

3. Mr. Prasad, learned advocate appearing for the Income Tax authorities, has drawn the attention of the court to the cases reported in *Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others*, and also *Kuldeep Singh Vs. Tax Recovery Officer*, and submitted that there is no merit in the writ petition and that interference by this writ court is not necessary.

4. Regard being had to the materials on record and in particular to the pleadings made by the parties, it appears that both the appeals are still now pending before the Appellate Assistant Commissioner of Income Tax, Jalpaiguri. The assessments made for the subsequent years have been completed and the result is in favour of the Department. The only point raised before this court is as to whether the steps taken for recovery of the dues are unwarranted in law or not. This court has nothing to consider as to the merits of the appeals which would be decided by the appropriate authority in accordance with law. A short point has arisen as to whether the steps taken for recovery of the dues are either contrary to and/or inconsistent with the provisions of law or there is lack of jurisdiction to recover the dues in the manner as is sought to be done by issuance of the said proclamation, While the appeals are pending, the petitioners may very well take steps before the appellate authority to obtain necessary orders to recover the dues pending appeals but this court does not find any lack of jurisdiction to recover the dues as sought to be done in the instant case. For the materials disclosed by this court and looking to the provisions of law, this court is of the

view that the petitioner cannot have any grievance before the writ court for necessary interference.

5. Thus, there is no merit in the writ petition. The rule is discharged. All interim orders are vacated, There will be no order as to costs.