

(1961) 06 CAL CK 0032

In the Calcutta High Court

Case No : Civil Revision Case No. 4950 of 1960

RAMESH BEHARI GHOSE

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 27-06-1961

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 19
Public Demands Recovery Act — Section 7

Citation : 65 CWN 1090 : (1962) 2 ILR (Cal) 202 : (1962) 45 ITR 622

Hon'ble Judges : Banerjee, J

Bench : Division Bench

Judgement

BANERJEE J. - For the assessment year 1947-48 petitioner was assessed under the head "capital gains", on a sum of Rs. 35,300, being the sale proceeds of premises No. 2, Sadananda Road. The tax assessed on the aforesaid sum was calculated at Rs. 2,256-13-0.

For realisation of the tax as assessed, Certificate Case No. 2819-I. T. of 1951-52 was started against the petitioner before the Certificate Officer, 24-Parganas, under the provisions of the Public Demands Recovery Act read with section 46(2) of the Indian Income Tax Act.

The petitioner filed a suit, being Title Suit No. 34 of 1955, in the first Court of the Subordinate Judge at Alipore, for a declaration that the assessment was illegal and also for a declaration that the certificate proceeding and the orders passed thereunder were inoperative and without jurisdiction and for an injunction restraining the opposite party herein from proceeding with the certificate. The suit succeeded to a limited extent. The learned Subordinate Judge declared that the certificate proceeding, on the basis of the notice u/s 7 of the Public Demands Recovery Act, offended against the provisions of the Public Demands Recovery Act itself and could not be proceeded with as such. The other prayers made in the plaint were, however, refused.

A second attempt on the part of the present opposite party to recover the

Income Tax dues under the provisions of the Public Demands Recovery Act also failed on grounds with which I am not concerned in this rule.

Thereupon, the opposite party, the Union of India, filed a suit in the Court of Small Causes, Calcutta, for recovery of a sum of Rs. 1,956.81 nP., being the arrears of tax due from the petitioner, less payments already made. Paragraphs 16, 17 and 18 of the plaint, filed in the Court of Small Causes, Calcutta, are set out below :

"16. Notwithstanding the said order of the Certificate Officer Alipore, the defendant is still liable to pay the aforesaid balance arrears of tax, namely, Rs. 1,956-13-0 due from him as aforesaid.

17. The cause of action arose wholly within the local limits of the jurisdiction of this court where the orders assessing the defendant were made and arose on July 6, 1950, and on November 2, 1950, when the defendant first committed defaults in payment of the tax demanded of him u/s 29 of the Indian Income Tax Act for the assessment year 1947-48 and on every successive day of default since then.

18. The plaintiff in this suit seeks to recover from the defendant the aforesaid outstanding balance tax, namely, Rs. 1,956-81 nP. as aforesaid, and prays for judgment and decree against the defendant for the said sum of Rs. 1,956-81 nP. with all costs of this suit and for interest on the decretal amount at 6 per cent. per annum until realisation in full and for such other and further orders and reliefs which to the court may seem fit and proper."

The present petitioner filed a written statement denying the allegations in the plaint. By its judgment dated September 5, 1960, the court below decreed the claim made by the plaintiff opposite party.

The propriety of the decree is being disputed before me in this rule.

A singular point was argued by Mr. Nani Coomar Chakravarti, learned advocate for the petitioner, in support of this rule. Mr. Chakravarti contended that u/s 19 of the Presidency Small Cause Courts Act, 1882, the Court of Small Causes, Calcutta, had no jurisdiction to try "suits concerning the assessment or collection of the revenue". The suit filed by the plaintiff opposite party was essentially a suit for collection of revenue, namely, balance of Income Tax dues and as such was excepted from the cognizance of the Small Causes Court.

Mr. Balai Lal Pal, learned advocate for the opposite party, tried to get rid of the objection as to the jurisdiction of the Small Causes Court on the following line of reasoning. He contended on the authority of the decision by the Privy Council in the case of Doorga Prosad v. Secretary of State that "..... although Income Tax may be popularly described as due for a certain year, it is not in law so due. It is calculated and assessed by reference to the income of the assessee for a given year, but it is due when demand is made u/s 29 and section 45. It then becomes a debt due to the Crown, but not for any particular period." Mr. Pal further

contended that such demand had been made of the petitioner and on his failure to satisfy the dues or the debt due to the Crown, a suit was instituted for realisation of the money debt and as such the suit was cognizable by the Small Causes Court, Calcutta.

There are certain infirmities in the argument of Mr. Pal, which make it unacceptable to me. The amount of Income Tax, as assessed, may become due after demand is made u/s 29 and section 45 of the Indian Income Tax Act. It may, thereafter, become a debt due to the Crown. As such debt it may be realised under the Public Demands Recovery Act. But because it becomes a debt, it does not lose its character as arrear of revenue. The word "debt" means a sum payable in respect of a liquidated money demand recoverable by action. The word is a generic name for various kinds of money payable, for example, a judgment debt or a public demand u/s 3(6) of the Public Demands Recovery Act or a private demand for money had and received.

Under section 46(2) of the Indian Income Tax Act :

"The Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue."

Under Schedule 1(3) of the Public Demands Recovery Act "any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue," may be realised as a public demand under the Public Demands Recovery Act.

The aforesaid provisions of law relate to the mode of recovery of taxes. But because the mode is the same as the mode of recovery of land revenue and because the arrear of Income Tax becomes debt to the Crown when due, such tax does not lose its character as arrear due by way of revenue.

In the instant case, the position is made amply clear in paragraph 18 of the plaint. The suit according to the plaintiff was for recovery of the outstanding balance of Income Tax. That was no doubt a debt due to the Crown. But still then it is a debt due as arrear of tax and as such as arrear of revenue. For realisation or collection of such revenue the Court of Small Causes, Calcutta, was not the proper forum and that court, therefore, had no jurisdiction to entertain the claim.

I hold that section 19 of the Presidency Small Causes Courts Act excepted the claim in the instant case from the jurisdiction of the Calcutta Small Causes Court. For the reason aforementioned, I set aside the decree passed by the court below, as a decree passed without jurisdiction over the subject-matter of the suit.

This rule is made absolute without any order as to costs.

Order accordingly.