
(1989) 12 CAL CK 0041
In the Calcutta High Court
Case No : C.R. No. 2195 (W) of 1979

Salil Kumar Ghosh

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 06-12-1989

Acts Referred:

Income Tax Act, 1961 — Section 226(3)

Citation : (1991) 187 ITR 398 : (1991) 58 TAXMAN 157

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Sanjay Bhattacharjya, for the Appellant; R.C. Prasad, for the Respondent

Judgement

Susanta Chatterjee, J.—The petitioner obtained the present rule on March 26, 1979, praying, inter alia, for issuance of a writ of mandamus commanding the respondents to rescind the notice u/s 226(3) of the Income Tax Act dated February 21, 1979, issued by respondent No. 1 and the warrant of attachment of movable properties dated February 13, 1979, issued in execution of certificates Nos. 1410 and 1411 TR/5A/N/78-79 dated March 31, 1978, by respondent No. 2 to the Tax Recovery Officer and two notices of demand to defaulters both dated May 15, 1978, one in respect of the assessment year 1973-74 and the other in respect of the assessment year 1974-75. It is stated in detail that the petitioner inherited certain properties from his father, Dr. Sourendra Nath Ghosh, since deceased. The petitioner has also purchased a property at No. 59, Patuatolla Lane, Calcutta. It is further stated that the tax payable by the petitioner on account of his salary has been deducted at source. The petitioner is, however, liable to pay Income Tax on his house property income. The names and description of the tenants occupying different portions of the property have been disclosed in the writ petition. The petitioner alleges that the inherited properties were not free from encumbrances. Several charges were there, in terms of the will left by the predecessor of the petitioner. The petitioner, however, described that there is a total demand for arrear taxes to the tune of Rs. 6,967 for the

assessment years 1958-59 to 1963-64. It was, however, observed by the Income Tax Department that the petitioner had paid some of the instalments granted to him but later on he failed to pay the balance instalments and as such there was imposition of penalty of Rs. 2,000 on the assessee. The petitioner, however, preferred an appeal and the same is still pending. It is further placed on record that by a penalty order for the assessment year 1964-65, a penalty of Rs. 1,212 was imposed. However, by raising several demands against the petitioner, garnishee proceedings were initiated by serving notice dated July 25, 1969, and July 28, 1969, u/s 226(3) of the Income Tax Act upon six tenants as detailed in the writ petition. It is alleged that a huge sum was realised from the petitioner's tenants month after month and year after year. The garnishee proceedings are still kept alive. It is specifically alleged that, at no point of time, the petitioner was given to understand on what account and for realisation of which Income Tax, the garnishee proceedings were started against the petitioner although the petitioner approached the Income Tax authority and requested the Income Tax authority for giving a necessary break-up. It is also not disclosed as to what are the arrears due from the petitioner, although a huge sum has been realised on the petitioner's account from the petitioner's tenants since August, 1969. The petitioner has also filed appeals against the assessment years 1965-66 and 1966-67 and he has filed returns for the subsequent years. Copies of the assessment orders for the assessment years 1967-68 to 1970-71 have been collectively filed along with the writ petition. It is also placed on record that, being aggrieved by the assessment order for the assessment year 1971-72, the petitioner preferred an appeal before the Appellate Assistant Commissioner and the appeal was allowed and the matter was remanded to the Income Tax Officer concerned. However, for the assessment year 1972-73, an assessment was made by the Income Tax Officer, "N"-Ward, raising a demand of Rs. 484 for recovery of which a Certificate No. 1028/N/76-77 was issued against the petitioner. For the realisation of the said demand in the said certificate case, a warrant of attachment of movable property was also issued by the Tax Recovery Officer, Calcutta, 24-Parganas. It is also alleged that several certificates were issued for the assessment years 1964-65 to 1969-70 ; besides for the sale of the properties at No. 59/2,-64, Patuatolla Lane, Calcutta, the petitioner was subjected to payment of capital gains tax by an order of assessment dated March 31, 1977, for the assessment year 1974-75. The petitioner, however, preferred an appeal against the order for the assessment year 1974-75 and during the pendency of the appeal, tax recovery proceedings were started by forwarding the certificates to recover the amount of Rs. 43,829 for the assessment year 1974-75 and also for recovery of an amount of Rs. 3,022 for the assessment year 1973-74. It is stated in detail that a huge sum of Rs. 39,133 was demanded of the petitioner for the assessment year 1974-75. There is, however, issuance of a warrant of attachment dated February 13, 1979, on the movable property of the petitioner. It is alleged that regard being had to the materials on record and the background of the case, the garnishee notice is bad in law. Consequently, the petitioner has come to this court and obtained the rule on March 26, 1979, and an interim

order in terms of prayer (f) to the extent that the respondents will not take any step in pursuance of the notice u/s 226(3) of the Income Tax Act, 1961, dated February 21, 1979, warrant of attachment of movable properties dated February 13, 1979, and two notices of demand for defaults both dated May 15, 1978, till the disposal of the rule.

2. Mr. Sanjay Bhattacharjya, appearing for the writ petitioner, has argued that the impugned notice u/s 226(3) of the Act dated February 21, 1979, issued by respondent No. 1, Income Tax Officer, "N"--Ward, Dist: VA, Calcutta, is not in accordance with law and he has no jurisdiction or authority to realise any amount payable to the petitioner by Messrs. Voltas Ltd., the employer of the petitioner inasmuch as no notice within the meaning of Section 226(3) of the said Act has been served upon Messrs. Voltas Limited. Moreover, without disposing of the application for stay of realisation of the demand dated May 17, 1979, u/s 220(6) of the Income Tax Act, no step can be taken to recover any tax for the relevant assessment year and to treat the petitioner as a defaulter. The certificate proceedings for realisation of the alleged tax in respect of the assessment year 1974-75 is otherwise illegal, invalid and without jurisdiction as claimed, The challenge of the petitioner against the garnishee notices issued as early as on July 25, 1969, and July 28, 1969, upon the tenants of the petitioner and by reason of their demands made by the petitioner from time to time are much in excess over the actual taxes due and as such the respondents have no competence, jurisdiction and/or authority to enforce the certificate proceedings. It is also submitted that in view of the fact that the appeals in respect of the assessment years 1958-59, 1961-62, 1968-69, 1969-70, 1970-71 and 1971-72 are pending for a long time, the recovery of tax in respect of those years is improper, illegal and mala fide. The steps taken for recovery of the taxes for the assessment years 1965-66, 1966-67 and 1967-68 are also illegal. The specific grievance of the petitioner is that respondent No. 1 has not disclosed to the petitioner the actual amount of realisation already made by reference of the garnishee proceedings as early as on July 25, 1969, and July 28, 1969, although by letters dated October 29, 1973, and February 12, 1975, the respondents cannot take steps to recover by any coercive process.

3. The writ petition is contested by the respondents by filing an affidavit-in-opposition. It is stated that, due to a sudden fire in the office of the Income Tax Department, the records are not available. The petitioner is, however, called upon to give strict proof of the payment alleged to have been made by him. It is also disclosed that since the petitioner, on February 26, 1979, assured that he would make a payment of Rs. 10,000 by March 15, 1979, the notice u/s 226(3) was withheld from being served on the employer of the petitioner. It has been denied that by serving a garnishee notice upon the petitioner's employer, respondent No. 1 has blocked the main source of living. According to the respondents, all the steps taken by them towards recovery proceedings are legal, valid and justified. Since the records are not available from the Department on account of fire as stated above, two tenants, viz., Pankaj Kumar Roy and Subodh

Sengupta of 59, Patuatolla Lane, Calcutta, were called u/s 131 and it could be gathered that they had paid a sum of Rs. 8,415 u/s 226(3) of the Act up to December 1977/78. The amount, if any, paid by any other tenant is not known. The respondents have categorically denied that anything in excess has been realised and that the same is otherwise refundable to the petitioner.

4. Mr. R. C. Prasad, learned advocate appearing for the Income Tax authorities, has very frankly submitted that no records are available in the Department to verify the claims and counter-claims of the respective parties. Due to a sudden fire, all the relevant records of the present case have been destroyed and those are not available to be produced before this court for effective adjudication.

5. However, after going through the pleadings of the parties and recording the submissions of the learned advocates appearing for the petitioner and the Income Tax authorities, it appears that several assessments were made for various assessment years and in some of the cases, the appeals were alleged to be pending on the date of issuance of the rule. It is not brought to the notice of the court as to whether those appeals are still pending or whether they have been disposed of in accordance with law. If the appeals are found to be still pending, the same have got to be disposed of by reconstruction of the documents according to law also. In the event the appeals have been disposed of, the law will take its course for recovery of the same unless the final order in appeal has been set aside by any authority of competent jurisdiction. It is needless to observe that, for a long time, the rents have been realised from the tenants in occupation of the premises of the petitioner by way of garnishee proceedings. It is up to the respondent authority to disclose fully as to what amount up-to-date has been realized by them on account of the claim against the petitioner. The realisation of taxes cannot continue for an indefinite period unless the arrear dues are ascertained and the adjustment is made from the realisation of the rents from the tenants in a consistent and lawful manner.

6. Considering these aspects of the matter, the present rule is disposed of by directing respondent No. 4, Commissioner of Income Tax, West Bengal-II, Calcutta, to ascertain the actual amount paid by the tenants of the petitioner by way of garnishee proceedings till date by reconstructing the documents available in the Department and by making an investigation enabling the petitioner and its tenants to produce documents of payment. The petitioner will extend all co-operation and respondent No. 4 will become competent to issue notice to the tenants concerned to produce the documents of payment accordingly. Such investigation has to be completed within three months from the date of the communication of the order. After ascertaining the amount paid by the tenants and/or realized by the Income Tax authorities, proper steps will be taken by the Tax Recovery Officer to realise if there is no other bar and/or impediment in accordance with law. If any amount has been found to be realised in excess, the same would be refunded to the petitioner within sixty days from the final investigation as indicated above. It is further made clear that this order will not

prevent the respondent authorities from disposing of any pending appeal nor will it prevent the respondent from taking steps to implement the result of the appeals in accordance with law. It is further made clear that until completion of the investigation as indicated above, further realisation from the tenants by way of garnishee proceedings will be kept in abeyance. In the light of the above observations, the rule is disposed of. All other interim orders are vacated. There will be no order as to costs. Liberty to mention.