(1972) 09 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3009 of 1972

Satya Pal Verma — APPELLANT

Vs

Income Tax Officer, C-Ward and Another — RESPONDENT

Date of Decision : 28-09-1972

Acts Referred:
Income Tax Act, 1961 — Section 156, 159(3), 220(1), 220(4), 226

Citation : (1977) 106 ITR 540

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : S.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution.

2. There were some Income Tax arrears due from Sri A. N. Verma, the father of the petitioner. Sri A. N. Verma died in the year 1958; the arrears related to assessment years 1947-48, 1949-50 to 1955-56. The Income Tax Officer, Dehra Dun, is trying to realise the arrears of tax from the petitioner by attachment of his property and by way of proceedings u/s 226(3) against the tenants of the petitioner''s property and from the creditors of the petitioner. Even the money payable to the petitioner under (insurance) policies of his life were sought to be attached. The petitioner has challenged these proceedings on various grounds such as :

(i) that the recovery proceedings had been initiated against him without serving upon him a notice of demand ;

(ii) that the petitioner has not inherited any asset from the deceased and, as such, is not liable to pay the arrears of tax.

(iii) that his personal property is not liable to be proceeded against in satisfaction of the arrears of tax due from his late father; and

(iv) that the recovery proceedings are barred by time.

3. It is not necessary to deal with all the contentions, because, in our opinion, the petitioner succeeds on the first ground.

4. Admittedly, no notice of demand had been served upon the petitioner requiring him to pay the arrears of tax due from his late father. There is no doubt that the petitioner being the legal representative of his late father is liable to pay the tax due from the latter to the extent of the estate of the deceased inherited by him. Under Sub-section (3) of Section 159 he shall be deemed to be an assessee for purposes of the Act, but recovery proceedings, including proceedings u/s 226, can be initiated only against an assessee in default. Under Sub-section (4) of Section 220 an assessee shall be deemed to be in default only if he does not pay the tax within the time and in the manner specified in the notice of demand. A notice of demand is issued u/s 156 to every assessee for tax payable : and u/s 220(1) the amount specified as payable in the notice of demand u/s 156 shall be paid within 35 days from the date of the service of the notice. Thus, it is clear that unless an assessee is served with the notice of demand and he fails to comply with that notice within 35 days from the date of receipt of the notice he cannot be said to be an assessee in default and, consequently, no recovery proceedings can be taken against him. Merely because an assessee has the knowledge of the tax assessed against him or payable by him under any of the provisions of the Income Tax Act the service of the notice of demand cannot be dispensed with. In the counter-affidavit it is not denied that no notice of demand was served upon the assessee but it is said that he had knowledge of the arrears of tax due from his father. This is not enough to render him as an assessee in default. The recovery proceedings are, therefore, illegal and cannot be sustained.

5. The petition is accordingly allowed. The recovery proceedings against the petitioner, including the notices u/s 226(3) of the Income Tax Act (annexures "4 to 10" to the writ petition), are quashed. The stay order dated 3rd May, 1972, whereby the petitioner was restrained from withdrawing the sum under life insurance policies Nos. 7704456 and 13569329 is discharged. The petitioner is entitled to the costs of this petition.

6. Petition allowed.