

(1959) 04 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 138 and 139 of 1956

Seghu Buchiah Setty

APPELLANT

Vs

Income Tax Officer, Kolar Circle and Another

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Income Tax Act, 1922 — Section 45, 46

Citation : (1960) 38 ITR 204

Hon'ble Judges : Hombe Gowda, J; Ahmed, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; D.M. Chandrasekhar, for the Respondent

Judgement

Hombe Gowda, J.—The petitioner Seghu Buchiah Setty has presented these two petition sunder article 226 of the constitution of India for issue of a writ of certiorari or direction in the nature of a writ of certiorari quashing the proceedings of the Income Tax Officer, Kolar, and the Commissioner of Income Tax, Bangalore, in the petitioner cases u/s 45 and 46 of the Indian Income Tax Act for the assessment years 1953-54 and 1954-55.

2. Two separate orders for the years 1953-54 and 1954-55 were passed by the Income Tax officer against the petitioner u/s 23(4) of the Indian Income Tax Act fixing up his assessable income for the assessment year 1953-54 at Rs. 61,000 and demanding a tax of Rs. 19,808-1-0 and an assessable income of Rs. 1,21,000 for the assessment year 1954-1955 and demanding a tax of Rs. 66,601-3-0. The petitioner presented two separate applications to the Income Tax Officer, Kolar, u/s 27 of the Indian Income Tax Act requesting him to cancel the assessments and to proceed to make fresh assessments. The applications were rejected on the ground that there was no sufficient cause for non-compliance with the notice u/s 22(2) of the Indian Income Tax Act. The petitioner then presented two appeals against the ex parte assessment orders passed against him u/s 23(4) of the Act and also against the orders passed u/s 27 of the

Act to the Appellate Assistant Commissioner of Income Tax, "A" Range, Bangalore. The learned Appellate Assistant Commissioner of Income Tax reduced the assessable income of the petitioner substantially for the two years and fixed the tax due for the year 1953-54 at Rs. 4,215-9-0 and for the year 1954-55 at Rs. 13,346-8-0. Before the Appellate Assistant Commissioner of Income Tax passed these orders demand notices in the prescribed forms had been issued to the petitioner by the Income Tax Officer fixing up a particular date for the payment of the amount. The petitioner did not pay the money within the time prescribed. Therefore, the Income Tax Officer issued a certificate to the Collector of Kolar District to collect the money. Separate notices of demand were not issued by the Income Tax Officer issued a certificate to the collector of Kolar District to collect the money. Separate notices of demand were not issued by the Income Tax Officer after the Appellate Assistant commissioner of Income Tax reduced the taxable income of the petitioner and also the tax levied by the Income Tax Officer. It is stated that the petitioner has preferred the appeals to the Income Tax Appellate Tribunal against the orders passed by the appellate Assistant Commissioner in Income Tax and they are yet pending. In the meanwhile the Collector of Kolar District, who had attached the Immovable properties of the petitioner, was taking necessary action to recover the tax due. After the Appellate Assistant Commissioner of Income Tax passed the orders reducing the taxable income of the petitioner and also the tax due by the petitioner for the two years, a letter was addressed by the Income Tax Officer, Kolar Circle, on February 14, 1956, intimating that the Appellate Assistant commissioner of Income Tax had fixed up his liability to Income Tax for the years 1953-54 and 1954-55 at Rs. 4,215-9-0 and Rs. 13,346-8-0 respectively and that he should pay the amount at once into the local treasury and intimate that fact to the office failing which heavy penalty will be imposed, the Collector of Kolar District proceeded to bring the immovable properties of the petitioner for sale that had been attached on the basis of the certificate issued by the Income Tax Officer originally. These proceedings were taken by the collector on the basis of the original certificate issued by the Income Tax Officer which amount was reduced by the Appellate Assistant Commissioner of Income Tax.

3. It is contended by Sri Srinivasan, the learned counsel for the petitioner, that in the absence of a separate demand notice issued in the prescribed form after the Appellate Assistant Commissioner of Income Tax allowed the appeals preferred by the petitioner in part and reducing to proceed to collect the Income Tax due by him on the basis of the original certificate issued by the Income Tax Officer on the basis of the assessment and the tax levied by him originally. The question as to whether it is necessary to issue a second demand notice or a third demand notice as and when the appellate authorities reduce the assessable income of a party in appeal or in revision came up for consideration before a Division bench of the Calcutta High Court in *Metropolitans Structural works Ltd. v. Union of India*. His Lordship Chakravarti, C.J., who rendered the judgment in the case, answered the question in the affirmative with the following observations :

"In support of the rule, Mr. Roy contended that section 29 of the Income Tax Act which provided for the issue of a notice of demand did not provide either expressly or by implication that upon an assessment being revised either by the Appellate Assistant commissioner or by the Income Tax Appellate Tribunal, a fresh notice of demand could be issued. In the course of his argument he modified the contention to a certain extent and submitted in the end that although there might not be any prohibition in section 29 against issuing a fresh notice of demand after an assessment had been revised it was not necessary that such a fresh notice should be issued. I may say at once that if the last be the contention of Mr. Roy, his client must obviously fail, because if the third notice of demand, as issued in the present case, is not prohibited by law, there is no reason why the period of limitation relative to it should not be computed from the last day of the financial year in which it was issued.

The real point, however, is whether a second or a third notice of demand is at all permissible u/s 29 even when an assessment is altered in a first or a second appeal. It appears to me that the necessity of issuing a fresh notice of demand in such circumstances is beyond argument. Suppose the amount in such circumstances is beyond argument. Suppose the amount of tax assessed by the Income Tax officer is Rs. 2,000 and a notice of demand is issued in respect of that amount. If the assessee appeals and the assessment is reduced to say Rs. 1,500, the notice of demand already issued in respect of Rs. 2,000 will clearly cease to be appropriate. Similarly, if the assessee appeals again and the assessment is further reduced, the intermediate notice of demand issued in respect of the sum assessed by the appellate Assistant Commissioner will again cease to be appropriate and the necessity for issuing a fresh notice will again arise. Such being the necessity in actual fact, the next question is whether the necessity has been recognised by the section and whether the language of the section warrants such successive notices. In my view, the answer to that question can only be in the affirmative. The words with which section 29 opens are : "When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act", it is noticeable that the section does not say "in consequence of any assessment order" but says "in consequence of any order". Such order is an order "passed under or in pursuance of this Act" and it can hardly be disputed that an order passed by an appellate Assistant commissioner or an order passed by an Appellate Tribunal is also an order passed under or in pursuance of the Income Tax Act. If so, when there is some tax due in consequence of an order passed by the Appellate Assistant Commissioner or in consequence of an order passed by the appellate Tribunal, a clear occasion arises under the words of the section to serve a notice of demand upon the assessee. That such fresh notice should be issued when the assessment is altered is but common sense and I see no reason to construe the section against reason and against the actual necessities or realisation."

4. It is clear from the above that the respondents are not entitled to treat the petitioner as a defaulter in the absence of a fresh notice of demand issued in a

prescribed form after the appellate Assistant commissioner of Income Tax reduced his taxable income and the tax payable by him for the two years. The proceedings of the Collector based on the original certificate issued by the appellate assistant Commissioner of Income Tax is, therefore, illegal. The respondents are bound to issue separate demand notices in accordance with the decision of the appellate Assistant commissioner of Income Tax fixing up the time and place for payment of the tax failing which treating the petitioner as a defaulter and then proceed to issue necessary certificate to the Collector for the recovery of the amount as if it were a land revenue. without issuing such a demand notice and treating the petitioner as a defaulter in case he fails to deposit the amount within the time prescribed, the respondents have no justification to issue a certificate to the Collector to collect the arrears of Income Tax taking coercive process. The petitioner is, therefore, entitled to succeed in these writ petitions.

5. In the result, therefore, these writ petitions are allowed. A writ as prayed for by the petitioner will issue in these two petitions. The petitioner will get his costs from the respondents. We fix advocate's fee at Rs. 100 (Rupees one hundred) in each of these petitions.

Ahmed Ali Khan, J.

6. I agree

7. Petition allowed.