
(2006) 10 AHC CK 0023
In the Allahabad High Court

Subhash Chandra Goel

APPELLANT

Vs

Tax Recovery Officer and Others

RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 132(3), 220(2)

Citation : (2008) 297 ITR 400

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The validity of auction sale of the property being shop No. 44/2/G/108, situate at Sanjay Place, Agra, on the ground floor, held on March 19, 1997, by the Tax Recovery Officer is under challenge in the present writ petition. The said shop was auction sold for a sum of Rs. 2,72,000 in pursuance of the sale proclamation dated January 27, 1997, and auction took place on March 19, 1997. The property has been purchased by Sri Mukesh Mittal, respondent No. 3, in the writ petition in whose favour the sale has been confirmed on July 2, 1998, the sale certificate has been issued.

2. The brief facts giving rise to the present writ petition are as follows:

By the orders dated October 30, 1992, the assessing authority completed the assessments for the assessment years 1981-82 to 1987-88 and created demand towards the Income Tax dues. In appeal the Commissioner of Income Tax (Appeals), vide order dated October 30, 1992, reduced the demand by partly allowing the appeals. The demand, vide notice dated March 29, 1993, against the petitioner stood as follows after the order of the first appellate authority:

-----	Sl. Assessment Amount No. year (Rs.)
-----	1. 1980-81 9,280

2. 1981-82 1,20,131

3.	1982-83	2,23,616		
4.	1983-84	2,49,628		
5.	1984-85	2,94,504		
6.	1985-86	3,94,108		
7.	1986-87	3,66,051		
8.	1987-88	21,01,465	-----	Total
		37,58,783	-----	

3. Being still dissatisfied with the orders of the first appellate authority, the matter was taken up in second appeal by the petitioner before the Income Tax Appellate Tribunal. During the pendency of appeals, the Department initiated recovery proceedings against the petitioner to recover the outstanding dues. In pursuance thereof a warrant of attachment of immovable property was issued by respondent No. 1 on August 23, 1993, showing the outstanding demand of Rs. 38,64,000 having failed to pay the aforesaid demand. The Department proceeded further in the matter to recover the outstanding dues and the recovery certificate for Rs. 38,64,000 dated August 3, 1993, was issued by the Deputy Commissioner and proclamation of sale was drawn by the Tax Recovery Officer, Agra, on January 27, 1997. February 28, 1997, was the date fixed for sale but it was postponed to March 19, 1997, when the sale actually held.

4. In this intervening period two subsequent important events took place. Firstly, the Tribunal allowed the appeals filed by the petitioner, relating to the assessment year 1980-81 to the assessment year 1986-87, on the ground that the assessments were made after the expiry of the statutory period and were barred by time. It rejected the appeal for the assessment year 1987-88 and confirmed the assessment order by which a sum of Rs. 21,01,465 was payable by the petitioner as Income Tax dues for that year. Secondly, the assessment for the subsequent assessment years 1990-91, 1991-92 and 1992-93 were finalised, creating additional demands of Rs. 6,63,506 plus interest, Rs. 7,94,783 plus interest and Rs. 39,002 plus interest, respectively.

5. The Assessing Officer took note of the order of the Income Tax Appellate Tribunal allowing the appeals of the petitioner for the assessment years up to 1986-87 as also dismissal of the appeal for the assessment year 1987-88 and also the outstanding liabilities against the petitioner for the assessment years 1990-91, 1991-92 and 1992-93. The Assessing Officer informed the Tax Recovery Officer that the following demand is outstanding against the assessee on March 18, 1997.

6. Before the auction, reserve price of the shop in question was fixed by the Department as per the Department's valuer's report. The petitioner through his objection dated February 27, 1997, submitted that the reserve price to be fixed as per the wealth-tax assessment order for the assessment year 1988-89. The

relevant portion of the said request, copy of which has been filed as annexure 3 to the writ petition, is reproduced below:

Kindly fix the price as per W.T. assessment order for the assessment year 1988-89 copy file to you. The proposed price is too much below the actual cost.

Therefore, the auction on lesser value than the market price should be stopped. The Income Tax Appellate Tribunal's order heard on January 27, 1997, is awaited in favour of the assessee.

7. The auction took place on March 19, 1997, and respondent No. 3 was the successful bidder in the said auction. An application in the form of objection challenging the validity of the auction dated March 19, 1997, was filed by the petitioner on March 22, 1997, before respondent No. 1 on the ground that the shop in question was sold "at lower market price is not valid while the assessee had filed the objection time to time regarding the valuation the reserve price fixed by you and the position of registration". It was stated that the builder had not yet executed a sale deed in respect of the disputed shop in favour of the assessee/petitioner. The reminder dated March 31, 1997, was given by the petitioner with the request to decide the objection dated March 22, 1997, filed as annexure 6.

8. The Tax Recovery Officer, vide order dated July 2, 1997, rejected the objections, copy of the said order is filed as annexure 8 to the writ petition. The appeal filed against the said order of the Tax Recovery Officer before the Commissioner of Income Tax (Appeals) was initially as not maintainable, but subsequently, on the directions dated February 25, 2002, of the High Court in Writ Petition No. 190 of 2000 Subash Chandra Goyal Vs. Tax Recovery Officer and Others, decided the appeal of the petitioner on the merits by the impugned order dated June 17, 2002, which is under challenge in the present writ petition.

9. The Department in its counter-affidavit has supported the order upholding the auction on the ground that after the order passed by the Income Tax Appellate Tribunal on March 5, 1997, there remained substantial outstanding demand for the assessment years 1987-88, as well as the demands for the assessment years 1990-91, 1991-92, 1992-93 aggregating to Rs. 31,37,941. The demands were communicated by the Assessing Officer for the assessment years 1990-91 to 1992-93 to the Tax Recovery Officer on July 29, 1994, and the Tax Recovery Officer had issued a notice on August 10, 1994, in Form No. 57 as prescribed under Rule 2 of the Second Schedule to the Income Tax Act to the assessee-petitioner and these notices were served on him on August 16, 1994. The auction sale, according to the Department, was made taking into consideration the demands for the assessment years 1990-91 to 1992-93 also as is evident from the advertisements which appeared in the daily newspaper on March 19, 1997. With regard to the fixation of reserve price the stand of the Department is that it was fixed in consultation with the senior officers of the Department by associating technical expert, i.e., the Assistant Valuation Officer of the

Department vide paragraph 18 of the counter-affidavit. The plea of non-issuance of fresh notice for the revised demand has been sought to be justified on the ground that the demands for the assessment years 1990-91 to 1992-93 were included and for the demand for the year 1987-88 no notice was required as there was no change/variation in demand by the order of the Income Tax Appellate Tribunal. Thus, no revised demand of notices were required to be served on the petitioner.

10. Respondent No. 3, the auction purchaser has also filed a counter-affidavit and supported the auction proceedings and has come out with the case that the sale of the property has been confirmed by the concerned authority after examining all the aspects and provisions of law. The sale certificate has been issued to him and under no circumstances, the property sold can be reverted back to the petitioner.

11. Learned Counsel for the petitioner in support of the writ petition has argued basically the following three points:

(1) The auction held on March 19, 1997, is void and illegal inasmuch as the reserve price was not fixed in the light of the objections raised by the petitioner.

(2) Secondly, the sale proclamation was issued on January 27, 1997, showing the outstanding liability of the petitioner towards Income Tax for the assessment years 1980-81 to 1987-88 at Rs. 38,64,201 plus interest u/s 220(2) of the Income Tax Act. The Tribunal by the order dated March 5, 1997, annulled the assessment orders for the assessment years 1980-81 to 1986-87 as no fresh sale proclamation was issued, the impugned sale is liable to be set aside.

(3) Thirdly, that the amount of Rs. 16,55,000 was seized by the Department in the search on February 25, 1987, and this amount should have been credited to the outstanding dues of the petitioner and the Department has wrongly made adjustment of the said cash seized against the other demands of the petitioner and his family members.

In reply, learned standing counsel for the Department and learned Counsel for respondent No. 3 supported the auction sale in question by placing reliance on the orders passed by the Tax Recovery Officer and the Commissioner of income tax-2.

12. Taking first point first, it may be noted here that the said point has been repelled by the authorities below on the ground that the price of the shop in question was fixed after due deliberations with the expert by the higher officials of the Department.

13. The only grievance raised by the petitioner against the reserve price as fixed by the Department was that it should be fixed at the price as it was valued by the Department under the Wealth-tax Act for the assessment year 1988-89 (valuation date March 31, 1988). It is difficult to agree with the submission of learned Counsel for the petitioner in this regard for the reasons more than one.

It may be noted here that the auction was proposed to be held in the year 1997 and initially February 28, 1997, was the date fixed for auction which was adjourned to March 19, 1997, on which date the auction actually took place. An asset is valued for the wealth-tax purpose on the date of valuation of a particular assessment year. The value of the asset may appreciate or depreciate in the following assessment years depending upon the facts and circumstances of each case. By no stretch of imagination can be said that the asset which has been valued on the particular date will command the same market value after 8-9 years. Thus, the insistence of the petitioner without there being any supporting material to fix the reserve price in the light of the wealth-tax assessment for the assessment year 1988-89 is uncalled for. Noticeably no error or defect was pointed out by the petitioner in the process of valuing the asset by the valuer of the Department while fixing the reserve price of the shop in question at Rs. 2,50,000. The object and purpose of the fixation of the reserve price is that the said asset shall not be sold below the reserve price thus fixed. There is absolutely no material or tangible evidence on the record of the authorities below or before this Court in the writ petition, that the shop sold at Rs. 2,72,000 has fetched a price lesser than the market price prevalent at the relevant time in the locality. The Valuation Officer, Income Tax Department, Agra, by his report dated December 10, 1996, fixed the valuation of the shop in question at Rs. 2,50,000 which was treated as reserve price by the Department. In the absence of any cogent material to show that the reserve price was arbitrarily fixed by the Department, the said plea raised by the petitioner is without substance and cannot be accepted.

14. Then, it was urged that the entire sale proceedings is null and void as no fresh sale proclamation was issued by the Tax Recovery Officer so as to give effect the order passed by the Income Tax Tribunal for the assessment years 1980-81 to 1986-87. Before examining the said issue it is desirable to recapitulate the correct factual position.

15. It is evident that the petitioner all the time raised a single grievance that the reserve price of the shop in question was not correctly fixed. The objection dated March 22, 1997, already referred to above, and the reminders (annexures 5 and 6) do show only this much that the reserve price was not correctly fixed. Even in the written submission (annexure 7 to the writ petition, filed before the Tax Recovery Officer, dated May 28, 1997, the petitioner did raise the plea that a fresh sale proclamation be issued. It is important to note that even the Tax Recovery Officer in paragraph 3 of his order dated July 2, 1997, has stated that the petitioner raised only one grievance and that is with regard to the reserve price of the immovable property. An endorsement by the petitioner with regard to this is on the order sheet vide entry dated May 20, 1997. If that is so, the petitioner, by no stretch of imagination can be permitted to raise any other plea other than the one raised before the authorities below before this court. The entry dated May 20, 1997, in the order sheet and objections and its reminders and written submissions (filed as annexures 5 and 6 to the writ petition) are

sufficient to disentitle the petitioner to raise any other issue specially when the adjudication of the said issue involved investigation of various factual aspects of the case. Even otherwise, I am of the view that there is no merit in the aforesaid plea of the petitioner.

16. It is true that in the sale proclamation drawn on January 27, 1997, a copy of which has been filed as annexure 2 to the writ petition, a sum of Rs. 38,64,000 has been shown as outstandings towards Income Tax dues against the petitioner for the various assessment years in question. The proclamation of sale was issued in pursuance of the warrant of attachment of immovable property for the assessment years 1980-81 to 1987-88 for recovery of Rs. 38,64,201 plus interest vide annexure 1 to the writ petition, which is dated August 23, 1992. The said outstanding liability was there when the sale proclamation was drawn. In other words, it was correctly drawn on November 27, 1997, and to that extent there is no dispute between the parties. Before the auction took place the Income Tax Appellate Tribunal allowed the appeals for the assessment years 1980-81 to 1986-87, the appeal relating to the assessment year 1987-88 was dismissed. A sum of Rs. 21,01,465 is the balance demand for the assessment year 1987-88. The Tax Recovery Officer as well as the Commissioner of Income Tax (Appeals) have mentioned in their orders that in the meantime the assessment for the assessment years 1990-91 to 1992-93 were also completed by the Assessing Officer and intimation of the same was given by them to the Tax Recovery Officer, who in his turn had issued notices for the recovery of Rs. 6,63,506 plus interest Rs. 17,94,783 and Rs. 39,002 plus interest for the aforesaid three assessment years. The show-cause notices issued to the assessee-petitioner in Form No. 57 to deposit the aforesaid demands were served on the assessee-petitioner on August 16, 1994. In this view of the matter a total sum of Rs. 31,67,941 was outstanding as the Income Tax demand against the petitioner on the day of auction. Demand notices were served for the assessment years 1987-88, 1990-91 to 1992-93 on the petitioner and he failed to comply with the demand notices, is not disputed by the petitioner. The Department is right in its submission that there was no variation/modification in the demand of the aforesaid assessment years (1987-88, 1990-91 to 1992-93) and demand notices were indisputably served on the petitioner, there was no illegality in conducting the auction sale on March 19, 1997, for the recovery of the aforesaid dues against the petitioner. In the counter-affidavit it has also been mentioned that the public at large was informed through the newspaper dated March 19, 1997, with respect of the aforesaid outstanding demands against the petitioner to which there is no specific denial in the rejoinder affidavit. From the above discussion the following factual position emerges.

(1) The sale proclamation was issued for the recovery of Rs. 38,64,000 vide annexure 2.

(2) The demands for the assessment years 1980-81 to 1986-87 were set aside by the Income Tax Appellate Tribunal, but the demand amounting to Rs.

21,01,465 in respect of the assessment year 1987-88 remained and was maintained by the Tribunal.

(3) Before the actual sale, the demands for the assessment years 1990-91 to 1992-93 were created by the assessment orders which was communicated to the Tax Recovery Officer who had issued the notices in the prescribed Form No. 57 to the petitioner and were served on him on August 16, 1994.

17. Thus, Sri Ravi Kant, learned senior advocate for the petitioner is not correct in his submission that the effect of the order of the Income Tax Appellate Tribunal was not given effect to either by the Assessing Officer or by the Tax Recovery Officer. The facts as emerges from the record is otherwise.

18. Strong reliance was placed on decision of *Moni Senan Vs. Commissioner of Income Tax and Others*, wherein the Kerala High Court after examination of the relevant provision of Schedule II to the Income Tax Act held that if the amount is not paid by the specified time, the officer is obliged to proceed to realise the amount by one and more modes prescribed. Views of the defaulter be given due importance as regards the fixation of upset price. The notice is publicly given before proclamation is drawn. The defaulter gets an opportunity and he has the option to suggest the reserve price. The above observations were made in a different factual context. In that case, there was failure for giving notice drawing up for proclamation. The reserve price in respect of property was fixed on previous auction but it was not incorporated for sale proclamation and no notice was given to the defaulter before drawing up the proclamation. In this factual background it has been held in the above case that "as there was no notice given to the defaulter about drawing up of the proclamation, the consequent steps cannot be held as valid and binding". It was further held that the property could be put to auction only after compliance with the statutory formalities to be observed. This is not the position in the case in hands. The sale proclamation was drawn, notice of demand was served on the petitioner and his only objection is that effect to the order of the Appellate Tribunal was not given. The fact that the demand for the assessment year 1987-88 to the tune of Rs. 21 lakhs odd was outstanding on the date of auction and was included in the sale proclamation is not being disputed. Assuming for a moment that the demands for the assessment years 1990-91 to 1992-93 are not taken into account, this Court is of the view that this would not in any way affect the auction held on March 19, 1997. The grounds of setting aside the sale of immovable property are limited one and have been statutorily recognised under Rule 61 of the Second Schedule to the Income Tax Act. Learned senior counsel could not show anything as to how the petitioner has sustained substantial injury or there was any material irregularity in publishing and conducting sale.

19. The next case relied upon is *Sultan Leather Finishers Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and Another*, wherein this Court has held that recovery proceedings cannot be taken in a case when the assessee had already moved an application for rectification u/s 154 of the Income Tax Act. The said

case was decided in a different set of facts. The recovery proceedings were initiated during the pendency of application for rectification of mistake filed u/s 154 of the Income Tax Act. In this fact situation the court felt that the authority concerned should dispose of the said rectification application first within the specified time and directed the Tax Recovery Officer not to proceed with the recovery as against the petitioner for the said amount till the disposal of the rectification application. The said case has hardly any application inasmuch as in the case in hand, the appeals arising out of rectification orders were disposed of by the Tribunal as even admitted by the petitioner, on March 5, 1997, i.e., before the auction sale and the appellate orders were given due effect in the recovery proceedings.

20. In this connection reliance was also placed upon a Division Bench judgment of this Court in the case of Mannoo Lal Kedar Nath (HUF) Vs. Income Tax Officer and Others, This case apparently supports the contention of the petitioner, but on the deeper scrutiny it is evident that the observations made therein were made in the special facts of that case. The sale was held on a recovery certificate issued for Rs. 16 lakhs odd. The demand was reduced in appeal for different years, much earlier, outstanding dues of different years admittedly were Rs. 6 lakhs odd only, although an intimation of the decision of appeal was given by the assessee in March, 1977, yet the demand was not modified. In this factual ground it was held that the jurisdiction of the Income Tax Officer u/s 222 of the Income Tax Act to attach and sell the immovable property of the assessee intimates the default of payment of arrears due.

21. The relevant portion of the judgment is reproduced below (page 613):

The effect of reduction of tax in appeal was that the liability of the petitioner had been substantially reduced. It could not, therefore, be deemed to be in arrears of the amount erroneously mentioned in the recovery certificate. The jurisdiction of the Income Tax Officer u/s 222 of the Income Tax Act to attach and sell the immovable property of the assessee emanates from default in payment of arrears due. When there was a mistake about it and the certificate was issued under a misapprehension, then the proceedings for sale stood vitiated. Alteration or withdrawal of the certificate after the sale under Sub-section (4) of Section 225 could not remove the infirmity in the sale which took place on a recovery certificate on arrears which did not exist in fact. In Union of India (UOI) Vs. Jardine Henderson Ltd., it was held that a sale held on a certificate which had been reduced was invalid.

22. The above observation should be read in the factual background of the case and it may also be noted that the legal position as then existed was different. The Income Tax Officer without giving effect to the appellate order reducing the demand, initiated the proceedings for recovery of the demand. The mistake thus was in the certificate issued by him. It was held that instead of the withdrawal of the certificate after sale under Sub-section (4) of Section 225 could not remove the infirmity in the sale, which took place on a recovery certificate for the

arrears, which did not exist in fact. The factual aspect of the above case does not have even remotely any semblance with the case of the petitioner as the sale proclamation when it was issued in any way does not mention the incorrect Income Tax dues. It is not even the case of the petitioner that a sum of Rs. 38,64,000 u/s 220(2) of the Income Tax Act as shown in the proclamation of sale annexure 2 was not outstanding on the day of sale of proclamation. The total length and breadth of the argument of the petitioner is that as a result of subsequent development, i.e., the appeals for the assessment years 1980-81 to 1986-87 having been allowed by the order dated March 5, 1997, the demand remained to the tune of Rs. 21 lakhs plus odd for the assessment year 1987-88. There was evidently no irregularity or illegality on the day on which the sale proclamation was issued. These are the distinguishing features to distract the applicability of the aforesaid judgment. Moreover, as mentioned in the penultimate paragraph of the judgment the Department in that case could not show that no certificate of recovery of over and above Rs. 16 lakhs as stated in the counter-affidavit of that case was issued. In contra besides the demand of Rs. 21 lakhs plus odd for the assessment year 1987-88, the petitioner is defaulter in making payment of Income Tax demand for the assessment years 1990-91 to 1992-93 in spite of service of notice of demand by the Tax Recovery Officer in the prescribed Form No. 57, the total of all the four assessment year comes to Rs. 31,67,941. In this connection, it is apt to reproduce the following paragraph from the judgment of the apex court in *Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others*,

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

23. The aforesaid observation has been reproduced and followed in *State of Haryana and Others Vs. AGM Management Services Ltd.*,

24. There is an additional reason for not following the dictum laid down in the case of *Mannoo Lal Kedar Nath (HUF) Vs. Income Tax Officer and Others*, The court was concerned with the statutory provisions, namely, Section 225(4) of the Income Tax Act, as it then existed, i.e., the law as it was up to March 31, 1989. Prior to its substitution, Section 225 by the Direct Tax Laws (Amendment) Act, 1987, it stood differently. However, it is not necessary to dilate any further in the matter inasmuch as we are presently concerned with the case where the auction sale has taken place and recovery proceedings were initiated after April 1, 1989. Section 225(2) of the Act as it stands today takes care of situation where the order giving rise to a demand of tax is modified in appeal or other proceedings under the Income Tax Act and as a consequence thereof the demand is reduced, but the order is the subject-matter of further proceedings under the Act. Section

225(3) as it stands with effect from April 1, 1989, concerns a situation where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of appeal or other proceedings under the Act. In such circumstances the Tax Recovery Officer shall when the order which has been the subject-matter of such appeal or the proceedings has become final and conclusive, amend the certificate or cancel it, as a case may be.

25. The case of Mannoo Lal Kedar Nath (HUF) Vs. Income Tax Officer and Others, was not concerned with the contents of proclamation of sale. The proclamation has to be drawn in accordance with Rule 53 of the Second Schedule to the Income Tax Act, which lays down that it shall specify, as fairly and as accurately as possible:

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or in part thereof;
- (c) the amount for the recovery of which sale is ordered;
- (cc) the reserve price, if any, below which the property may not be sold; and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

26. The stand of the Department is that there is no procedure to cancel the proclamation on reduction of demand and to issue fresh proclamation. The use of the words "as fairly and accurately as possible" do show that every effort shall be made by the Department to state the particulars required under Rule 53 as fairly and accurately as possible on the day when the sale proclamation is drawn up. Learned Counsel for the petitioner could not show any provision for making any amendment in the sale proclamation after it was drawn "fairly and accurately" on account of subsequent development which may vary the amount for recovery. The fact remains that there was no inaccuracy or error in the sale proclamation when it was drawn up and thus, in my opinion the sale held in pursuance of the validly drawn proclamation cannot be held to be invalid, except in one situation as has been pointed out by the apex court in the case of Sri Mohan Wahi Vs. Commissioner, Income Tax, Varanasi and Others, . In this case the sale proclamation was drawn on December 3, 1979, and the sale took place actually on January 11, 1980. The demand against the assessee was reduced to nil before confirmation of sale, in this fact situation on interpretation of Rule 56 in the Second Schedule to the Income Tax Act, it was held that it casts an obligation on the Tax Recovery Officer and the order confirming the sale consciously with due application of mind to the relevant facts relating to the sale by public auction which is to be confirmed. Under Rule 63, the confirmation of sale is not automatic. Between the date of sale and the actual passing of the order, the confirmation of sale if an event happens and if the fact comes to the notice of the Tax Recovery Officer, which goes to the root of the matter, the Tax Recovery Officer may refuse to pass an order confirming the sale. The fact that

the sale was being held for an assumed demand, which is found to be fictitious or held to have been not existed at all, in fact or in the eye of law is one such event which would oblige the Tax Recovery Officer not to pass an order confirming the sale and rather annul the same. It may be noticed that the apex court was dealing with a case, where ultimately before confirmation of sale it was found that there was no demand or no demand existed at all before confirmation of sale. It held that in such circumstances the sale cannot be confirmed. The facts in the case in hand do show that a huge demand much more than the auction price was in existence, even on the date of confirmation of sale and subsequent thereto. Moreover, the ratio laid down in the present case should be understood in the context of Section 225(3) as it stood at the relevant point of time, i.e., prior to its amendment on April 1, 1989.

27. This is another aspect of the case. It is now the matter of history that the apex court in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, with reference to the Indian Income Tax Act, 1922, held that on the Income Tax Officer's order being revised in appeal, the default based on it and all consequential proceedings must be taken to have been superseded and fresh proceedings have to be started to realise the dues as found by the revised order. Law was amended by the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, retrospectively.

28. The apex court in *Union of India (UOI) Vs. Jardine Henderson Ltd.*, considered the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, which was passed with retrospective effect with a view to overcome the judgment of the apex court in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, , and held that in view of Clause (c) of Section 3(1) of the Validation Act, it is important to note that the said section clearly and expressly provides that no proceedings in relation to Government dues shall be invalid merely because no fresh notice of demand was served upon the assessee after the dues were enhanced or reduced in any appeal or proceedings. It is, therefore, plain that in two situations, auction proceedings were not become invalid, in case by reduction of demand and in the other by enhancement.

29. A Division Bench decision of this Court in *Manohar Lal and Padam Prakash Vs. Commissioner of Income Tax and Another*, has considered this point with depth and has observed as follows (page 247):

21. It would not be out of place to mention here that learned Counsel for the petitioners had half heartedly contended that the recovery proceedings in the facts and circumstances of the present case stood vitiated in law as no fresh demand notice had been served upon the assessee in pursuance of the order passed by the Appellate Assistant Commissioner whereby the amount of tax was substantially reduced. Learned Counsel for the Revenue met this argument by inviting our attention to the ruling in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, and the ruling in *Gopi Chand Vs. Union of India (UOI) and Others*, as well as the ruling in *Union of India (UOI) Vs. Jardine Henderson Ltd.*,

Our attention was also invited to the provisions of Sections 3 and 5 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964. A perusal of the ruling and the provisions of the Validation Act leads to an inference that no fresh notice of demand need be served upon the assessee in pursuance of reduction or enhancement of the tax in appeal. In the ruling in Union of India (UOI) Vs. Jardine Henderson Ltd., , their Lordships of the Supreme Court have indicated as below (at page 121):

Clause (c) of Section 3(1) of the Validation Act is also important and it clearly and expressly provides that no proceedings in relation to the Government dues shall be invalid merely because no fresh notice of demand was served upon the assessee after the dues were enhanced or reduced in any appeal or proceeding.

22. In Gopi Chand Vs. Union of India (UOI) and Others, a learned single judge of the Punjab and Haryana High Court, after quoting the provisions of Sections 3 and 5 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, has observed as below (at page 711):

It is apparent that the Validating Act was enacted to counter the effect of the Supreme Court judgment referred to above and all recovery proceedings taken before its enactment were validated.

23. In the present case, it appears to us that learned Counsel for the petitioners had advanced the argument regarding fresh notice of demand in pursuance of the order of the Appellate Assistant Commissioner whereby the tax dues were reduced from Rs. 8 lakhs odd to Rs. 2 lakhs odd on the basis of the observations made in Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, . The aforesaid ruling had considered the provisions of the Indian Income Tax Act, 1922, whereas the proceedings giving rise to the present writ petitions are under the provisions of the new Act of 1961 and the proceedings were initiated much after the enforcement of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964. Therefore, we do not find any merit in the contentions raised on behalf of the petitioners and we agree with the submissions of learned Counsel for the Department who has rightly placed reliance upon the ruling in Union of India (UOI) Vs. Jardine Henderson Ltd., and the provisions of the Validation Act, 1964.

30. Apart from the above, it appears that the Legislatures have taken pains, not to let this open any longer, by substituting Section 224.

31. Section 224 of the Income Tax Act after its substitution by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989, reads as follows:

224. Validity of certificate and cancellation or amendment thereof.—It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

32. In view of the above discussion, looked from any angle there is no merit in point No. 2 raised by learned Counsel for the petitioner.

33. Lastly, a dispute was raised that in search and seizure operation a sum of Rs. 16,55,000 was seized from the premises of the petitioner on February 25, 1987. This amount ought to have been adjusted against the demands in accordance with the provisions of Section 132B of the Income Tax Act. The said contention has been repelled by the Commissioner of Income Tax (Appeals) on the ground that certain payments out of seized cash were made against the demand of the petitioner and his family members as per request of the assessee for doing so it has referred a letter dated March 17, 1997, addressed to the Tax Recovery Officer in connection with the outstanding demand for the assessment years 1987-88, 1990-91 to 1992-93. The said dispute, in my opinion, has been raised by the petitioner as after thought and no such grievance was raised earlier during the attachment/recovery proceedings as also during the sale proceedings, prior to auction sale before the Tax Recovery Officer. The adjudication of the said issue requires verification and determination of the various facts as stated by the petitioner and denied by the Department. It was not the case of the petitioner before the authorities that on the date of sale proclamation or on the date of confirmation of sale there was no outstanding demand of Income Tax against him. The present writ petition arises out of an order passed by the Commissioner of Income Tax (Appeals) in connection with the confirmation of auction sale. The scope of the said enquiry in the petition is as to whether the sale should be confirmed or not. It cannot be widened by raising fresh and new pleas not raised by the petitioner before the Tax Recovery Officer prior to the date of actual auction sale or even within 30 days, thereafter the actual sale. In this connection, it may be noted that in the counter-affidavit the Department has set out the disbursement of Rs. 16,55,000 the cash seized in the search and has categorically stated that such disbursements were made on the request of learned Counsel for the petitioner. The relevant portion from the order of the Commissioner of Income Tax is reproduced below:

10. In his contentions, the assessee has also claimed that an amount of Rs. 16,55,000 seized from his premises during Income Tax search on February 25, 1987, ought to have been credited in his demands in accordance with the provisions of Section 132B. In this connection, it is seen that out of the seized cash, an amount of Rs. 2,77,650 was deposited as advance tax demand of the assessee for the assessment year 1987-88 on March 27, 1987, as per his request. Subsequently, an amount of Rs. 5,13,843 was also adjusted for this year's demand on March 13, 1990. An amount of Rs. 7,38,542 was adjusted against the demand of family members in whose names returns were filed after the search and assessments thereon were made on protective basis. In addition to these adjustments of seized cash against the protective demands of the family members, an amount of Rs. 56,046 was also adjusted against the wealth-tax demand of the assessee for the assessment year 1988-89. Subsequently, against the aforesaid protective assessments in the name of family members,

substantive assessments for the same incomes were finalised in the hands of the assessee and the seized cash earlier adjusted against the protective demands of the family members, was later on adjusted against demand in the assessee's case. On a perusal of the records of the Assessing Officer, it is also noticed that these payments out of seized cash against the demand of family members were made as per the request of the assessee for doing so.

34. The Department has also justified their action of adjustment of the seized cash against the demand of assessment years to which income found undisclosed and the existing liabilities as per the provisions of Section 132(3), Income Tax Act, vide paragraph 34(g) and (h) of the counter-affidavit. In the rejoinder affidavit, the averments made in the above paragraph having not been specifically denied and only this much has been stated that the contents of paragraph 34(g) and 34(h) are misconceived and hence are wrong and incorrect and not accepted and in reply thereto the contents of earlier paragraphs of the writ petition are reiterated here. The denial not being specific, the averments made in the counter-affidavit are treated correct.

35. Before parting with the case, it is desirable to note that under Rule 61 read with Rule 63 of the Second Schedule to the Income Tax Act, a defaulter at any time within 30 days from the date of sale may apply to the Tax Recovery Officer to set aside the sale of immovable property, on the ground that the notice was not served on the defaulter to pay arrears as required by the Schedule or on the ground of material irregularity in publishing and conducting the sale. In the case in hand it is not the case of the petitioner that the notice was not served on him to pay arrears. At the most the cancellation of the sale has been sought on the ground of material irregularity in publishing or conducting the sale. The phrase "material irregularity in connection, with auction sale" has acquired a definite legal connotation. It does not include a mere irregularity. It means that only such degree of irregularity in publishing or conducting the sale, which has caused substantial injury to the defaulter. In other words, even if there was some irregularity in publishing or conducting the sale and thereby no substantial injury has been caused to the defaulter, the sale shall not be liable to be set aside, this is an acknowledged position of law. In the entire writ petition or objections filed before the authorities below there is any whisper as to how the petitioner has sustained substantial damages in conducting the sale or in confirming the auction sale even if there was some variance with regard to the actual demand against him. The case of the Department is that it has through newspaper dated March 19, 1997, notified to the general public the correct demand against the petitioner. The publication of the correct demand in the newspaper as averred in the counter-affidavit has not been denied or disputed, specifically in the writ petition. This may be an additional ground for not granting any relief to the petitioner coupled with the fact that the sale has already been confirmed and the interest of the third party has intervened and on the face of record the demand is outstanding against the petitioner.

36. In view of the above discussion, there is no merit in the writ petition. The writ petition is dismissed accordingly, but no order as to costs.