

(1975) 01 KAR CK 0007
In the Karnataka High Court
Case No : Writ Appeal No. 22 of 1974

Tax Recovery Officer, Bangalore

APPELLANT

Vs

P. Balchand

RESPONDENT

Date of Decision : 20-01-1975

Acts Referred:

Income Tax Act, 1961 — Section 156, 220, 222
Income Tax Rules, 1962 — Rule 32

Citation : (1980) 121 ITR 871

Hon'ble Judges : M.K. Srinivas Iyengar, J;G.K. Govind Bhat, J

Bench : Division Bench

Judgement

Srinivasa Iyengar, J.—This is an appeal by the TRO of the I.T. department against the order of Jagannatha Shetty J. in Writ Petition No. 1863 of 1971 P. Balchand Vs. Tax Recovery Officer, Bangalore, by which a writ of mandamus was issued to the TRO to forbear from recovering tax from the respondent, Balchand, on the basis of the certificate issued by the ITO (Collection), Circle-1, Bangalore.

2. The respondent, Balchand, was a partner of a firm, Hindusthan Jewellery Mart, till November 13, 1966. For the assessment year 1967-68, an assessment was made in the name of the firm on February 12, 1968. The assessment was in the status of an unregistered firm.

3. The said firm was dissolved and the respondent became a partner of another firm, Hindusthan Drug House, on and after November 13, 1966. The notice of demand had been issued in the name of the firm.

4. On March 30, 1969, the ITO (Collection), Circle-1, Bangalore, issued a certificate under s. 222 of the Income Tax Act, 1961 (hereinafter called "the Act"), to the TRO to recover a sum of Rs. 31,919 together with interest. That certificate showed Hindusthan Jewellery Mart as the assessee in default. Pursuant to the said certificate, the TRO on March 25, 1971, issued a notice of attachment to the Hindusthan Drug House purporting to be under r. 32 of the Second Schedule to the Act, attaching the amount standing to the respondent's credit in

the books of account of that firm. The respondent challenged this action of the TRO as being not warranted by law.

5. The learned single judge held that, as the assessee in default was the firm of Hindusthan Jewellery Mart and the notice of demand had been issued in the name of that firm and also the certificate had been issued in the name of that firm, it could not be executed against a person whose name did not appear in the certificate, and, therefore, the action of the TRO in proceeding to attach the amount standing to the credit of the respondent was unauthorised.

6. The contention of the department before the learned single judge was that though r. 1 of the Second Schedule to the Act mentioned that "defaulter" meant the "assessee mentioned in the certificate", it should be held that a partner of a firm was also a defaulter and, therefore, the certificate could be enforced against a partner of the other firm. This contention was not accepted by the learned single judge, and, in our opinion, rightly.

7. Rule 32 under which the property of a person who is a partner and who is the defaulter can be attached, refers to the term "defaulter" which has the meaning as defined under Sch. II. The term "defaulter" means the assessee mentioned in the certificate. The expression "assessee in default" is also defined under the Act. Section 220 provides that when any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under s. 156 is not paid within the time prescribed, the person to whom the notice of demand is issued shall be the assessee in default. Section 156 provides that when any tax, interest, penalty or fine or any sum is payable in consequence of any order passed under the Act, the ITO shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable. It is, therefore, clear that the assessee who becomes a defaulter is the person to whom a notice of demand in the prescribed form is issued. The TRO gets jurisdiction on the issue of a certificate by the ITO (Collection), specifying the amount due from the assessee who has been in default. When the foundation for further action by the TRO is the certificate issued by the ITO and against the assessee in default mentioned in such certificate, he has no authority to proceed beyond the certificate and to try to enforce the demand against a person whose name does not appear in the certificate. On the facts which are not in dispute, the action of the TRO was clearly unauthorised. The view taken by the learned single judge also finds support from a Division Bench decision of the Andhra Pradesh High Court reported in Kethmal Parekh Vs. Tax Recovery Officer and Another, We ascertained from Sri S. R. Rajasekhara Murthy, learned counsel appearing for the department, that the decision of the Andhra Pradesh High Court has been accepted by the department and no appeal has been preferred against it.

8. We are in agreement with the view taken by the learned single judge. The appeal consequently fails and is dismissed with costs. Advocate's fee, Rs. 250.