(2004) 11 DEL CK 0074

In the Delhi High Court

Case No : WRIT Petition (C) No. 417 of 1983 29 November 2004

Vakil Chand Jain APPELLANT

Vs

Tax Recovery Officer RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Citation : (2005) 145 TAXMAN 299

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Full Bench

Advocate : Atul Sharma and Nilanka Chaudharyfor the assessed R.D. Jolly and Rajeev Awasthifor the Revenue, for the Appellant;

Judgement

B.C. Patel, CL

The petitioner, at the relevant time, was a Director of respondent No. 4 company, which is declared as a defaulter under the provisions contained in the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"). It is contended by the petitioner that he resigned as a Director on 10-9-1977. However, on behalf of the respondent it was pointed out that there is sufficient material to show that though he resigned as a Director, in view of the decision of the Board of Directors, he continues to be liable along with other Directors. We are not required to examine this aspect of the matter at this stage, Suffice it to say that the Tax Recovery Officer pointed out to the petitioner about the misfeasance and negligence and that the petitioner was involved in an excise matter wherein a fine of Rs. 1,500 was imposed. The Tax Recovery Officer also pointed out that the petitioner''s assets are required to be attached in view of section 179 of the Act and, Therefore, he issued a notice on 12-8-1981 calling upon the'' petitioner to show cause as to why action should not be taken. We reproduce the last paragraph of this notice which reads as under:

"In view of the above, you are requested to put your point of view, if any, upon the above said reply given by the company by 20-8-1981, failing which it shall be presumed that you have nothing to rebut and refute the above and accept your liability for the payment of the taxes u/s 179 of the Income Tax Act.''

2. Before us, the learned counsel for the petitioner submitted that the petitioner did not receive this letter. We are not examining the details of the defense put forth by the petitioner. We have examined rule 11 as well as rule 86 in Schedule II of the said Act where the procedure for recovery of taxes is indicated.

3. We think it is just and proper that the petitioner''s point of view that is reflected in the affidavit and the submissions made before us be pleaded before the Tax Recovery Officer by the petitioner and the Tax Recovery Officer shall examine the same and pass an order in accordance with law within a period of three months. However, it goes without saying that the petitioner shall place all the material before the Tax Recovery Officer within a period of two weeks from today and the petitioner shall, in the first instance, appear before the Tax Recovery Officer on 13-12-2004. It also goes without saying that the Tax Recovery Officer shall examine the case without being influenced by the order that we have passed today and shall examine all the aspects that may be placed before him by the petitioner.

The writ petition stands disposed of accordingly.

