

(1960) 02 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 337 of 1959

Yusuf Jan Sahib

APPELLANT

Vs

Additional Income Tax Officer, Quilon

RESPONDENT

Date of Decision : 16-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 45

Citation : AIR 1960 Ker 349 : (1961) 42 ITR 637

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : G. Viswanatha Iyer, for the Appellant; G. Rama Iyer, for the Respondent

Final Decision : Allowed

Judgement

S. Velu Pillai, J.—This is a petition under Art. 226 of the Constitution to quash Ext. P2 dated March 2, 1959, by which the Income Tax Officer refused to treat the petitioner, an assessee under the Indian Income Tax Act, 1922, "as not being in default as long as" the appeal preferred by him against the assessment "is undisposed of," by virtue of Section 45 of the Act. The petitioner submitted a return of income for about ten thousand rupees, but the Income Tax Officer assessed him, according to his best judgment, on seventy-nine thousand odd rupees and imposed tax to the extent of over thirty-four thousand rupees.

The petitioner deposited the admitted Income Tax of two thousand rupees, and preferred an appeal against the assessment. A sum of nearly six thousand rupees due to the petitioner by way of refund of Income Tax for previous years was adjusted by the Income Tax Officer, and the balance of tax payable by the petitioner was over twenty-four thousand rupees. The petitioner made an application u/s 45 of the Act, for treating him as not in default pending the disposal of his appeal, on the ground, that he had discontinued the major items of his business, that he was subjected to financial difficulties and that he has a

fair chance of success in the appeal preferred by him, expressing his willingness, for a sum of over seven thousand rupees due to him under some forest contract from Government, to be set off against his liability. By Ext. P2 the Income Tax Officer has, in effect, rejected his application but in these terms :

"In the circumstances stated by you, you are allowed to pay the amount in two instalments to be paid in March and April 1959."

The complaint of the petitioner before me was, that the Income Tax Officer did not exercise his discretion at all u/s 45 of the Act. Even the counter-affidavit of the respondent does not go further than Ext. P2, in elucidating the ground on which the application u/s 45 was ordered as above; paragraph 4 of the counter-affidavit only repeated what Ext. P2 has stated, that "the circumstances of the case did not justify stay of collection." Ext. P2 referred to the circumstances stated by the petitioner as the basis of the order.

For one thing, it is not possible to see, how the circumstances relied on by the petitioner can by themselves constitute a ground for decision against him; if so, the counter-affidavit at least should have indicated it. Secondly, the expression "the circumstances stated" is so nebulous, that it can go well with any order that may be passed, and cannot by itself furnish an indication, as to the exercise of discretionary power.

2. The decided cases are clear, that the Income Tax Officer must exercise the discretion vested in him u/s 45 of the Act, and that in a proper manner, failing which, the jurisdiction under Article 226 can be invoked. The latest case on the point was decided u/s 31(3) of the Wealth Tax Act, 1957, which is in pari materia with the relevant part of Section 45 of the Act. D. N. Sinha, J. in his judgment in Aluminium Corporation of India Ltd. Vs. Mr. C. Balakrishnan and Others, , has enumerated several points which the authority u/s 31(3) of the Wealth-Tax Act may usefully consider in exercising his discretion which, in my opinion, also apply to the exercise of the discretion u/s 45 of the Act. It is unnecessary to recapitulate these several points in this judgment. The learned Judge has also answered one of the contentions pressed before me by counsel for the respondent, in these terms :

"Quick realisation of tax may be an administrative expediency, but by itself it constitutes no ground for refusing a stay. While determining such an application, the authority exercising discretion should not act in the role of a mere tax-gatherer."

The learned Judge has also quoted the following observations of Harries, C. J., in an earlier case :

"Once an appeal was filed, however, it would be for the Income Tax Officer then to consider whether in the particular circumstances it would be just and proper to treat them as defaulters."

In VETCHA SREERAMAMURTHY Vs. THE Income Tax OFFICER VIZIANAGARAM,

AND ANOTHER., decided by a Division Bench of the Andhra Pradesh High Court, Subba Rao, C. J., as he then was, has held, that the discretionary power u/s 45 of the Act is coupled with a duty to exercise it, and if he does not exercise it or exercises it in such a manner that it is no exercise of discretion at all, he can be compelled under Article 226 to discharge his duty.

3. Applying these principles to the present case, I am not satisfied, that the Income Tax Officer exercised any discretion whatever, in rejecting the application u/s 45 of the Act. I therefore quash the order Ext. P2, and direct the Income Tax Officer to dispose of the application in accordance with law. It is seen from Ext. P-1, the application of the petitioner, that his appeal had been heard on February 20, 1959, but it still remains undisposed of. I make no order as to costs.